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AN INTERDISCIPLINARY REVIEW

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NATIONS BY CONSENT: DECOMPOSING THE NATION-STATE

Murray N. Rothbard

Libertarians tend to focus on two important units of analysis: the individual and the state. And yet, one of the most dramatic and significant events of our time has been the re-emergence—with a bang—in the last five years of a third and much-neglected aspect of the real world, the "nation." When the "nation" has been thought of at all, it usually comes attached to the state, as in the common word, "the nation-state," but this concept takes a particular development of recent centuries and elaborates it into a universal maxim. In the last five years, however, we have seen, as a corollary of the collapse of communism in the Soviet Union and in Eastern Europe, a vivid and startlingly swift decomposition of the centralized State or alleged nation-State into its constituent nationalities. The genuine nation, or nationality, has made a dramatic reappearance on the world stage.

I. THE RE-EMERGENCE OF THE NATION

The "nation," of course, is not the same thing as the state, a difference that earlier libertarians and classical liberals such as Ludwig von Mises and Albert Jay Nock understood full well. Contemporary libertarians often assume, mistakenly, that individuals are bound to each other only by the nexus of market exchange. They forget that everyone is necessarily born into a family, a language, and a culture. Every person is born

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into one or several overlapping communities, usually including an ethnic group, with specific values, cultures, religious beliefs, and traditions. He is generally born into a "country." He is always born into a specific historical context of time and place, meaning neighborhood and land area.

The modern European nation-state, the typical "major power," began not as a nation at all, but as an "imperial" conquest of one nationality—usually at the "center" of the resulting country, and based in the capital city—over other nationalities at the periphery. Since a "nation" is a complex of subjective feelings of nationality based on objective realities, the imperial central states have had varying degrees of success in forging among their subject nationalities at the periphery a sense of national unity incorporating submission to the imperial center. In Great Britain, the English have never truly eradicated national aspirations among the submerged Celtic nationalities, the Scots and the Welsh, although Cornish nationalism seems to have been mostly stamped out. In Spain, the conquering Castilians, based in Madrid, have never managed—as the world saw at the Barcelona Olympics—to erase nationalism among the Catalans, the Basques, or even the Galicians or Andalusians. The French, moving out from their base in Paris, have never totally tamed the Bretons, the Basques, or the people of the Languedoc.

It is now well known that the collapse of the centralizing and imperial Russian Soviet Union has lifted the lid on the dozens of previously suppressed nationalisms within the former U.S.S.R., and it is now becoming clear that Russia itself, or rather "the Russian Federated Republic," is simply a slightly older imperial formation in which the Russians, moving out from their Moscow center, forcibly incorporated many nationalities including the Tartars, the Yakuts, the Chechens, and many others. Much of the U.S.S.R. stemmed from imperial Russian conquest in the nineteenth century, during which the clashing Russians and British managed to carve up much of central Asia.

The "nation" cannot be precisely defined; it is a complex and varying constellation of different forms of communities, languages, ethnic groups, or religions. Some nations or nationalities, such as the Slovenes, are both a separate ethnic group and a language; others, such as the warring groups in Bosnia, are the same ethnic group whose language is the same but who differ in the form of alphabet, and who clash fiercely on religion (the Eastern Orthodox Serbs, the Catholic Croats, and the Bosnian Muslims, who, to make matters more complicated, were originally champions of the Manichaean Bogomil heresy).

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The question of nationality is made more complex by the interplay of objectively existing reality and subjective perceptions. In some cases, such as Eastern European nationalities under the Habsburgs or the Irish under the British, nationalisms, including submerged and sometimes dying languages, had to be consciously preserved, generated, and expanded. In the nineteenth century this was done by a determined intellectual elite, struggling to revive peripheries living under, and partially absorbed by, the imperial center.

II. THE FALLACY OF "COLLECTIVE SECURITY"

The problem of the nation has been aggravated in the twentieth century by the overriding influence of Wilsonianism on U.S. and world-wide foreign policy. I refer not to the idea of "national self-determination," observed mainly in the breach after World War I, but to the concept of "collective security against aggression." The fatal flaw in this seductive concept is that it treats nation-states by an analogy with individual aggressors, with the "world community" in the guise of a cop-on-the-corner. The cop, for example, sees A aggressing against, or stealing the property of, B; the cop naturally rushes to defend B's private property, in his person or possessions. In the same way, wars between two nations or states are assumed to have a similar aspect: State A invades, or "aggresses against," State B; State A is promptly designated "the aggressor" by the "international policeman" or his presumptive surrogate, be it the League of Nations, the United Nations, the U.S. President or Secretary of State, or the editorial writer of the august *New York Times.* Then the world police force, whatever it may be, is supposed to swing promptly into action to stop the "principle of aggression," or to prevent the "aggressor," be it Saddam Hussein or the Serbian guerrillas in Bosnia, from fulfilling their presumed goals of swimming across the Atlantic and murdering every resident of New York or Washington, D.C.

A crucial flaw in this popular line of argument goes deeper than the usual discussion of whether or not American air power or troops can really eradicate Iraqis or Serbs without too much difficulty. The crucial flaw is the implicit assumption of the entire analysis: that every nation–state "owns" its entire geographical area in the same just and proper way that every individual property owner owns his person and the property that he has inherited, worked for, or gained in voluntary exchange. Is

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the boundary of the typical nation-state really as just or as beyond cavil as your or my house, estate, or factory?

It seems to me that not only the classical liberal or the libertarian, but anyone of good sense who thinks about this problem, must answer a resounding "No."It is absurd to designate every nation-state, with its self-proclaimed boundary as it exists at any one time, as somehow right and sacrosanct, each with its "territorial integrity" to remain as spotless and unbreached as your or my bodily person or private property. Invariably, of course, these boundaries have been acquired by force and violence, or by inter-state agreement above and beyond the heads of the inhabitants on the spot, and invariably these boundaries shift a great deal over time in ways that make proclamations of "territorial integrity" truly ludicrous.

Take, for example, the current mess in Bosnia. Only a couple of years ago, Establishment opinion, Received Opinion of Left, Right, or Center, loudly proclaimed the importance of maintaining "the territorial integrity" of Yugoslavia, and bitterly denounced all secession movements. Now, only a short time later, the same Establishment, only recently defending the Serbs as champions of "the Yugoslav nation" against vicious secessionist movements trying to destroy that "integrity," now reviles and wishes to crush the Serbs for "aggression" against the "territorial integrity" of "Bosnia" or "Bosnia-Herzegovina," a trumped-up "nation" that had no more existence than the "nation of Nebraska" before 1991. But these are the pitfalls in which we are bound to fall if we remain trapped by the mythology of the "nation-state" whose chance boundary at time *t* must be upheld as a property-owning entity with its own sacred and inviolable "rights," in a deeply flawed analogy with the rights of private property.

To adopt an excellent strategem of Ludwig von Mises in abstracting from contemporary emotions: Let us postulate two contiguous nation-States, "Ruritania" and "Fredonia." Let us assume that Ruritania has suddenly invaded eastern Fredonia, and claims it as its own. Must we automatically condemn Ruritania for its evil "act of aggression" against Fredonia, and send troops, either literally or metaphorically, against the brutal Ruritanians and in behalf of "brave, little" Fredonia? By no means. For it is very possible that, say, two years ago, eastern Fredonia had been part and parcel of Ruritania, was indeed western Ruritania, and that the Rurs, ethnic and national denizens of the land, have been crying out for the past two years against Fredonian oppression. In short, in international disputes in particular, in the immortal words of W. S. Gilbert:

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Things are seldom what they seem,
Skim milk masquerades as cream.

The Beloved international cop, whether it be Boutros Boutros-Ghali or U.S. troops or the *New York Times* editorialist had best think more than twice before leaping into the fray.

Americans are especially unsuited for their self-proclaimed Wilsonian role as world moralists and policemen. Nationalism in the U.S. is peculiarly recent, and is more of an idea than it is rooted in long-standing ethnic or nationality groups or struggles. Add to that deadly mix the fact that Americans have virtually no historical memory, and this makes Americans peculiarly unsuited to barreling in to intervene in the Balkans, where who took what side at what place in the war against the Turkish invaders in the fifteenth century is far more intensely real to most of the contenders than is yesterday's dinner.

Libertarians and classical liberals, who are particularly well-equipped to rethink the entire muddled area of the nation-state and foreign affairs, have been too wrapped up in the Cold War against communism and the Soviet Union to engage in fundamental thinking on these issues. Now that the Soviet Union has collapsed and the Cold War is over, perhaps classical liberals will feel free to think anew about these critically important problems.

III. RETHINKING SECESSION

First, we can conclude that not all state boundaries are just. One goal for libertarians should be to transform existing nation-states into national entities whose boundaries *could* be called just, in the same sense that private property boundaries are just; that is, to decompose existing coercive nation-states into genuine nations, or nations by consent.

In the case, for example, of the eastern Fredonians, the inhabitants should be able to secede voluntarily from Fredonia and join their comrades in Ruritania. Again, classical liberals should resist the impulse to say that national boundaries "don't make any difference." It's true, of course, as classical liberals have long proclaimed, that the less the degree of government intervention in either Fredonia or Ruritania, the less difference such a boundary will make. But even under a minimal state, national boundaries would still make a difference, often a big one to the inhabitants of the area. For *in what language*—Ruritanian or Fredonian

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or both?—will be the street signs, telephone books, court proceedings, or school classes of the area?

In short, every group, every nationality, should be allowed to secede from any nation-state and to join any other nation-state that agrees to have it. That simple reform would go a long way toward establishing nations by consent. The Scots, if they want to, should be allowed by the English to leave the United Kingdom, and to become independent, and even to join a Gaelic Confederation, if the constituents so desire.

A common response to a world of proliferating nations is to worry about the multitude of trade barriers that might be erected. But, other things being equal, the greater the number of new nations, and the smaller the size of each, the better. For it would be far more difficult to sow the illusion of self-sufficiency if the slogan were "Buy North Dakotan" or even "Buy 56th Street" than it now is to convince the public to "Buy American." Similarly, "Down with South Dakota," or *a fortiori*, "Down with 55th Street," would be a more difficult sell than spreading fear or hatred of the Japanese. Similarly, the absurdities and the unfortunate consequences of fiat paper money would be far more evident if each province or each neighborhood or street block were to print its own currency. A more decentralized world would be far more likely to turn to sound market commodities, such as gold or silver, for its money.

IV. THE PURE ANARCHO-CAPITALIST MODEL

I raise the pure anarcho-capitalist model in this paper, not so much to advocate the model per se as to propose it as a guide for settling vexed current disputes about nationality. The pure model, simply, is that no land areas, no square footage in the world, shall remain "public"; every square foot of land area, be they streets, squares, or neighborhoods, is privatized. Total privatization would help solve nationality problems, often in surprising ways, and I suggest that existing states, or classical liberal states, try to approach such a system even while some land areas remain in the governmental sphere.

Open Borders, or the Camp-of-the Saints Problem

The question of open borders, or free immigration, has become an accelerating problem for classical liberals. This is first, because the welfare state increasingly subsidizes immigrants to enter and receive permanent

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assistance, and second, because cultural boundaries have become increasingly swamped. I began to rethink my views on immigration when, as the Soviet Union collapsed, it became clear that ethnic Russians had been encouraged to flood into Estonia and Latvia in order to destroy the cultures and languages of these peoples. Previously, it had been easy to dismiss as unrealistic Jean Raspail's anti-immigration novel *The Camp of the Saints*, in which virtually the entire population of India decides to move, in small boats, into France, and the French, infected by liberal ideology, cannot summon the will to prevent economic and cultural national destruction. As cultural and welfare-state problems have intensified, it became impossible to dismiss Raspail's concerns any longer.

However, on rethinking immigration on the basis of the anarcho-capitalist model, it became clear to me that a totally privatized country would not have "open borders" at all. If every piece of land in a country were owned by some person, group, or corporation, this would mean that no immigrant could enter there unless invited to enter and allowed to rent, or purchase, property. A totally privatized country would be as "closed" as the particular inhabitants and property owners desire. It seems clear, then, that the regime of open borders that exists *de facto* in the U.S. really amounts to a compulsory opening by the central state, the state in charge of all streets and public land areas, and does not genuinely reflect the wishes of the proprietors.

Under total privatization, many local conflicts and "externality" problems—not merely the immigration problem—would be neatly settled. With every locale and neighborhood owned by private firms, corporations, or contractual communities, true diversity would reign, in accordance with the preferences of each community. Some neighborhoods would be ethnically or economically diverse, while others would be ethnically or economically homogeneous. Some localities would permit pornography or prostitution or drugs or abortions, others would prohibit any or all of them. The prohibitions would not be state imposed, but would simply be requirements for residence or use of some person's or community's land area. While statists who have the itch to impose their values on everyone else would be disappointed, every group or interest would at least have the satisfaction of living in neighborhoods of people who share its values and preferences. While neighborhood ownership would not provide Utopia or a panacea for all conflicts, it would at least provide a "second-best" solution that most people might be willing to live with.

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Enclaves and Exclaves

One obvious problem with the secession of nationalities from centralized states concerns mixed areas, or enclaves and exclaves. Decomposing the swollen central nation-State of Yugoslavia into constituent parts has solved many conflicts by providing independent nationhood for Slovenes, Serbs, and Croats, but what about Bosnia, where many towns and villages are mixed? One solution is to encourage more of the same, through still more decentralization. If, for example, eastern Sarajevo is Serb and western Sarajevo is Muslim, then they become parts of their respective separate nations.

But this of course will result in a large number of enclaves, parts of nations surrounded by other nations. How can this be solved? In the first place, the enclave/exclave problem exists right now. One of the most vicious existing conflicts, in which the U.S. has not yet meddled because it has not yet been shown on CNN, is the problem of Nagorno-Karabakh, an Armenian exclave totally surrounded by, and therefore formally within, Azerbaijan. Nagorno-Karabakh should clearly be part of Armenia. But, how then, will Armenians of Karabakh avoid their present fate of blockade by Azeris, and how will they avoid military battles in trying to keep open a land corridor to Armenia?

Under total privatization, of course, these problems would disappear. Nowadays, no one in the U.S. buys land without making sure that his title to the land is clear; in the same way, in a fully privatized world, access rights would obviously be a crucial part of land ownership. In such a world, then, Karabakh property owners would make sure that they had purchased access rights through an Azeri land corridor.

Decentralization also provides a workable solution for the seemingly insoluble permanent conflict in Northern Ireland. When the British partitioned Ireland in the early 1920s, they agreed to perform a second, a more micro-managed, partition. They never carried through on this promise. If the British would permit a detailed, parish by parish, partition vote in Northern Ireland, however, most of the land area, which is majority Catholic, would probably hive off and join the Republic: such counties as Tyrone and Fermanagh, southern Down, and southern Armagh, for example. The Protestants would probably be left with Belfast, county Antrim, and other areas north of Belfast. The major remaining problem would be the Catholic enclave within the city of Belfast, but

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again, an approach to the anarcho-capitalist model could be attained by permitting the purchase of access rights to the enclave.

Pending total privatization, it is clear that our model could be approached, and conflicts minimized, by permitting secessions and local control, down to the micro-neighborhood level, and by developing contractual access rights for enclaves and exclaves. In the U.S., it becomes important, in moving toward such radical decentralization, for libertarians and classical liberals—indeed, for many other minority or dissident groups—to begin to lay the greatest stress on the forgotten Tenth Amendment and to try to decompose the role and power of the centralizing Supreme Court. Rather than trying to get people of one's own ideological persuasion on the Supreme Court, its power should be rolled back and minimized as far as possible, and its power decomposed into state, or even local, judicial bodies.

Citizenship and Voting Rights

One vexing current problem centers on who becomes the citizen of a given country, since citizenship confers voting rights. The Anglo–American model, in which every baby born in the country's land area automatically becomes a citizen, clearly invites welfare immigration by expectant parents. In the U.S., for example, a current problem is illegal immigrants whose babies, if born on American soil, automatically become citizens and therefore entitle themselves and their parents to permanent welfare payments and free medical care. Clearly the French system, in which one has to be born to a citizen to become an automatic citizen, is far closer to the idea of a nation-by-consent.

It is also important to rethink the entire concept and function of voting. Should anyone have a "right" to vote? Rose Wilder Lane, the mid–twentieth century U.S. libertarian theorist, was once asked if she believed in womens' suffrage. "No," she replied, "and I'm against male suffrage as well." The Latvians and Estonians have cogently tackled the problem of Russian immigrants by allowing them to continue permanently as residents, but not granting them citizenship or therefore the right to vote. The Swiss welcome temporary guest-workers, but severely discourage permanent immigration, and, *a fortiori*, citizenship and voting.

Let us turn for enlightenment, once again, to the anarcho-capitalist model. What would voting be like in a totally privatized society? Not only would voting be diverse, but more importantly, who would really

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care? Probably the most deeply satisfying form of voting to an economist is the corporation, or joint-stock company, in which voting is proportionate to one's share of ownership of the firm's assets. But also there are, and would be, a myriad of private clubs of all sorts. It is usually assumed that club decisions are made on the basis of one vote per member, but that is generally untrue. Undoubtedly, the best-run and most pleasant clubs are those run by a small, self-perpetuating oligarchy of the ablest and most interested, a system most pleasant for the rank-and-file non-voting member as well as for the elite. If I am a rank-and-file member of, say a chess club, why should I worry about voting if I am satisfied with the way the club is run? And if I am interested in running things, I would probably be asked to join the ruling elite by the grateful oligarchy, always on the lookout for energetic members. And finally, if I am unhappy about the way the club is run, I can readily quit and join another club, or even form one of my own. That, of course, is one of the great virtues of a free and privatized society, whether we are considering a chess club or a contractual neighborhood community.

Clearly, as we begin to work toward the pure model, as more and more areas and parts of life become either privatized or micro-decentralized, the less important voting will become. Of course, we are a long way from this goal. But it is important to begin, and particularly to change our political culture, which treats "democracy," or the "right" to vote, as the supreme political good. In fact, the voting process should be considered trivial and unimportant at best, and never a "right," apart from a possible mechanism stemming from a consensual contract. In the modern world, democracy or voting is only important either to join in or raitfy the use of the government to control others, or to use it as a way of preventing one's self or one's group from being controlled. Voting, however, is at best, an inefficient instrument for self-defense, and it is far better to replace it by breaking up central government power altogether.

In sum, if we proceed with the decomposition and decentralization of the modern centralizing and coercive nation-state, deconstructing that state into constituent nationalities and neighborhoods, we shall at one and the same time reduce the scope of government power, the scope and importance of voting and the extent of social conflict. The scope of private contract, and of voluntary consent, will be enhanced, and the brutal and repressive state will be gradually dissolved into a harmonious and increasingly prosperous social order.

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SECESSION RECONSIDERED

Robert W. McGee

> No people and no part of a people shall be held against its will in a political association that it does not want.[1]

The idea of secession has been around ever since there have been governments. It is an especially relevant topic today, as the emerging democracies in Eastern and Central Europe attempt to form new, stable political and economic units. The idea of secession, however, should not be limited to new and emerging democracies. The idea has relevance wherever a substantial portion of the population is dissatisfied with its current political arrangement. The theory can be applied to the portion of Northern California that wants to secede from California, or to the Southern portion of New Jersey, which wants to break away from New Jersey, or to Staten Island, which wants to secede from New York City. Theoretically, the theory can be applied to a single individual or household. In principle, there are no lower limits, although Mises would say there are technical considerations that preclude secession at the individual level.

Part I of this paper analyzes some arguments for and against secession. Parts II and III apply the Kendall and Louw model of secession to the case of emerging democracies and to some political units in the U.S.

[1] Ludwig von Mises, *Nation, State, and Economy* (New York: New York University Press, 1983), p. 34. This book originally appeared in German as *Nation, Staat, und Wirtschaft* in 1919.

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Part I of this paper analyzes some arguments for and against secession. Parts II and III apply the Kendall and Louw model of secession to the case of emerging democracies and to some political units in the U.S. The Kendall and Louw model, however, can be applied to any government where citizens have the power to make political decisions.

I. SECESSION: PRO AND CON

Over the centuries, political theorists have given a number of reasons why political entities should or should not be allowed to secede. Consider first some arguments against secession.

The Case Against

Harry Beran, a twentieth-century political theorist, poses the issue this way:

> According to democratic theory the people have sovereignty. Is this sovereignty a collective attribute of all citizens of an existing state or can some of them exercise their share of sovereignty by setting themselves up as an independent state? Majority rule is claimed to be an essential part of democracy. But is majority rule morally legitimate if a territorially concentrated minority does not acknowledge the unity of the state? According to liberalism, freedom is the greatest political good. Does this imply a freedom to secede? . . . Under what conditions, if any, is secession morally justified? Under what conditions, if any, is the forceful prevention of secession morally justified? Is there a moral right to secession? If there is, who are candidates for such a right: member nations of multi-national states, member states of federations, any group within a state with a suitable territory and the will to secede?[2]

Beran argues that secession should be prohibited if the group wishing to secede:

(1) is too small to assume the basic responsibilities of an independent state;
(2) is not prepared to permit sub-groups within itself to secede although such secession is morally and practically possible;

[2] Harry Beran, "A Liberal Theory of Secession," *Political Studies* (1984): 21–31, esp. p. 22.

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(3) seeks to exploit or oppress a sub-group within itself that cannot secede in turn because of territorial dispersal or other reasons;
(4) occupies an area fully enclosed by the borders of the existing state;
(5) occupies an area that is culturally, economically, or militarily essential to the existing state;
(6) occupies an area that has a disproportionally high share of the economic resources of the existing states.[3]

These limits on secession do not hold up under analysis. His first case, regarding minimum size, is not only incorrect but is totally beside the point. It is incorrect because there appears to be no size that is too small. Many independent nations are smaller than New York City, yet are viable: Consider Andorra, Antigua and Barbuda, Bahrain, Barbados, Dominica, Grenada, the Republic of Kiribati, Liechtenstein, the Republic of Maldives, Malta, Monaco, the Republic of Nauru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, the Republic of Seychelles, Tonga, Tuvalu, and Vatican City. Two nations, Monaco and Vatican City, are actually smaller than New York City's Central Park. Another nation, Hong Kong, is one of the world's economic giants, and is only slightly larger than New York City.[4] Furthermore, the argument is beside the point, since it should be up to those who want to secede to decide whether they form a sufficiently large political unit. Certainly, the decision should not be made by the political entity from which they want to secede.

[3] *Ibid.*, pp. 30–31. Beran is not the only one who advances these arguments to limit secession. Similar views have been expressed by numerous political philosophers over the years. See, for example, Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colo.: Westview Press, 1991), and Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press, 1978).

[4] New York City is 301 square miles in size, according to *The World Almanac & Book of Facts 1991*. By comparison, Andorra measures 185 square miles, Barbados 166, Liechtenstein 62, Malta 122, Monaco 0.7, San Marino 24, and Vatican City 0.17. New York's Central Park is 840 acres, or 1.3 square miles. Hong Kong is 375 square miles, including part of the mainland and outer islands. The Island of Hong Kong itself is actually much smaller than New York City.

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The next claim, that the seceding entity may not be prepared to permit sub-groups within itself to secede, is also unconvincing. If a group does not support its present government, it has the right to break away and form a government that is more to its liking. The fact that it will not allow a sub-group to exercise this same right is unfortunate, but does not alter its basic right to secede. The third argument, that the seceding entity may want to exploit or oppress a sub-group which cannot secede in turn because of territorial dispersal or other reasons, suffers from the same weakness as the second argument. While it is unfortunate if the break-away group wants to exploit or oppress another group that cannot itself secede, this is totally unrelated to the question of whether a group of individuals should ever be prevented from having the government of their choice, no matter how bad that government might be.

Beran's enclave argument is also unsatisfactory. Every island nation is an enclave of sorts. The only difference between an island nation and the enclave Beran envisions is that an island nation is surrounded by water, whereas an enclave is surrounded by land that belongs to another nation. Would it have been any more difficult for Hawaii to become the 50th state if it were surrounded by land rather than water? Hawaii is thousands of miles away from the continental United States, yet it is fully integrated into the United States. As long as there is free movement of persons and goods, it should not matter whether one nation is totally surrounded by another. Vatican City, which is totally surrounded by Rome, may serve as an example.

The argument that an entity should not be able to secede because it occupies an area that is culturally, economically, or militarily essential to the existing state raises a number of problems. For starters, culture belongs to the people, not the nation. It is fair to assume that culture will not suffer if part of an existing country decides to go its own way; culture may actually be improved. In fact, one reason why a group typically wants to secede is to preserve a cultural identity, which might have been suppressed by the country of which it is presently a part. Soviet suppression of the Lithuanian and Ukrainian cultures are only two of many examples. Furthermore, forbidding a group from having the government of its choice for economic reasons smacks of exploitation. Should a group be denied its freedom so that the government can exploit the assets of some of its citizens? Just because the section that wishes to secede might include a major city or abundant natural resources is not a sufficient reason to deny the basic right of self-determination. In a free society, all assets

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are ultimately owned by individuals, not governments, and any attempt to deny owners access to their property is a basic violation of their rights.

The military argument presents additional problems. Should people be deprived of their basic right to the government of their choice just because they live in an area that is militarily important to someone else? Should Germany or the Soviet Union be able to control the geographic area we now call Poland just because it is needed as a buffer zone? Should France or Germany be able to control Belgium for the same reason? How about Israel's control of Gaza and the West Bank? Should the individuals who live in these areas not be able to have the government of their choice? Why must the interests of the actual residents be subordinate to those of foreigners?

Beran's last case, that the seceding territory has a disproportionate share of economic resources of the existing state, also crumbles under analysis. In a free society, assets are owned by individuals, not governments. Individuals have the only legitimate claim to assets and the country in which those assets are located should be determined by the owners of the assets, not by someone else. Furthermore, the abundance of natural resources has little to do with a country's standard of living. The standard of living a country enjoys depends on its economic system, not the amount of natural wealth within its borders. Japan, for example, must import more than 99% of its oil and has no natural resources of any consequence. It cannot even grow enough food to feed itself. Yet it is one of the most economically powerful countries in the world. Hong Kong is another example. Brazil and the former Soviet Union, on the other hand, possess abundant natural resources and yet have crippled economies. This is because Japan and Hong Kong have market economies and respect for property rights. What they do not possess within their borders, they can get through trade. Brazil and the former Soviet Union have mercantilist economies. They have resources but cannot utilize them effectively.[5]

Others over the years have said that secession should never be allowed. Lincoln, for example, said in his first inaugural speech:

[5] In a market economy, individuals can do with their property as they see fit. In a mercantilist economy, government permission is needed for everything. The Brazilian and Soviet economies are mercantilist, as are most third world countries. This point has been made by many economists, including Hernando de Soto, *The Other Path: The Invisible Revolution in the Third World* (New York: Harper & Row, 1989), originally published in Spanish under the title *El Otro Sendero* (1989).

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> I hold that, in contemplation of universal law and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever—it being impossible to destroy it except by some action not provided for in the instrument itself.[6]

Lincoln's argument is a variation of social contract theory. Once a people have entered into an agreement to recognize government, they can never withdraw their consent.[7]

This position has several weaknesses. First, there never was any social contract. There is no historical evidence to show that any group of individuals ever got together and entered into a contract to bind themselves and future generations irrevocably. Second, even if such a group did once enter into such a contract, unanimously, this still would not bind future generations. Under the legal principle of *rebus sic stantibus*, the terms of a contract are subject to modification or outright negation if circumstances change.[8] Lysander Spooner said the following in 1869 regarding the idea of a social contract:

> The Constitution has no inherent authority or obligation. It has no authority or obligation at all, unless as a contract between man and man. And it does not so much as even purport to be a contract between persons now existing. It purports, at most, to be only a contract between persons living eighty years ago. And it can be supposed to have been a contract then only between persons who had already come to years of discretion, so as to be competent to make reasonable and obligatory contracts. Furthermore, we know, historically, that only a small portion even of the people then existing were consulted on the subject, or asked or permitted to express either their consent or dissent in any formal manner. Those persons, if any, who

[6] Carl Sandburg, ed., *Abraham Lincoln: The War Years* (New York: Harcourt, Brace & Co., 1939), p. 128. It should be noted that Lincoln's view on secession was not consistent, as is shown below.

[7] For analysis of the social contract approach see Buchheit, *Secession: The Legitimacy of Self-Determination*, p. 21.

[8] *Ibid.*, p. 22.

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> did give their consent formally, are all dead now. Most of them have been dead forty, fifty, sixty, or seventy years. And *the Constitution, so far as it was their contract, died with them.* They had no natural power or right to make it obligatory upon their children. It is not only plainly impossible, in the nature of things, that they *could* bind their posterity, but they did not even attempt to bind them. That is to say, the instrument does not purport to be an agreement between any body but "the people" *then* existing; nor does it, either expressly or impliedly, assert any right, power, or disposition, on their part, to bind anybody but themselves.[9]

Thomas Jefferson would likely have agreed with this assessment. Jefferson believed that no generation had the right to bind another, and that contracts die with those who made them—generally after nineteen years, based on life expectancy at the time Jefferson made his observation:

> The question whether one generation of men has a right to bind another, seems never to have been started either on this or our side of the water. Yet it is a question of such consequences as not only to merit decision, but place, also, among the fundamental principles of every government. . . . I set out on this ground which I suppose to be self evident, "*that the earth belongs in usufruct to the living*"; that the dead have neither powers nor rights over it.[10]
>
> The earth belongs to the living, not to the dead. The will and the power of man expire with his life, by nature's law. . . . We may consider each generation as a distinct nation, with a right, by the will of its majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country. . . . At nineteen years then from the date of a contract, the majority of the contractors are dead, and their contract with them.[11]

[9] Lysander Spoonder, *No Treason: The Constitution of No Authority* (Boston: self-published, 1870; reprinted, Colorado Springs: R. Myles, 1973), p. 11.

[10] Jefferson to James Madison, September 6, 1789, in *Thomas Jefferson: Writings* (New York: Library of America, 1984), p. 959.

[11] Jefferson to John Wayles Eppes, June 24, 1813, *ibid.*, pp. 1280–1281. This passage has special relevance today regarding the huge deficit the federal government is amassing. In another passage of Jefferson's letter to Eppes, he points out that one generation should not spend on government projects what another generation will have to pay for. It is fair to assume that Jefferson, were he alive today, would favor repudiating the massive debt burden that various politicians have accumulated over the years, or at least the portion that is more than nineteen years old, and that he would support the idea of periodic repudiation.

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The Case for Secession

One of the strongest arguments in favor of secession is in the U.S. Declaration of Independence.

> We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; and that among these, are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, to effect their safety and happiness.

In others words, governments that do not have the support of the people may be altered or abolished and replaced with a new government that more closely corresponds to their wishes. The Founding Fathers stopped just short of approving the possibility of anarchy, by abolishing government and not replacing it. The Declaration goes on to say: "When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security." The Founding Fathers thus apparently did not condone secession except after a long series of abuses leading to absolute despotism. This view receives support in another section of the document: "Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." This passage applies the rule of reason to the possibility of secession. People should not secede and form new governments on the basis of whim. Sometimes it is better to keep the existing government and try to reform it internally, than to abolish it for less than grave reasons, because the new government might be no better than the one abolished.

However, there is no clearly defined cut-off point. The only legitimate functions of government in a liberal state are those that protect the life, liberty, and property of the people within the state. Any state that goes beyond that is illegitimate to a certain extent. Frédéric Bastiat, the nine-

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teenth-century French political philosopher and economist, attempted to define the cut-off point separating legitimate from illegitimate government action: "See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime."[12]

A number of government actions could thus be seen as illegitimate: taxing people who work and giving the proceeds to people who do not work; taxing all the people to pay for the construction of a bridge in one state (a number of pork-barrel projects fall under this genre); taxing all the people and using the proceeds to fund scholarships for persons of a certain race; preventing landlords from charging the market rate for their apartments (rent control laws); and so on. The list can go on and on, especially in welfare states, which hold redistribution of wealth to be one of the highest goals.[13] At what point does it become worthwhile to secede from such government? The answer is highly subjective. Many individuals would not want to secede from such a government described above because they regard these government functions as legitimate and desirable. Others would object to some functions and approve others.

Since all states are illegitimate to a certain extent, theoretically, they can all be justly abolished. But that would be impractical, so the individuals who comprise the state must decide how much injustice they are willing to put up with. The issue is complicated by the fact that many individuals who live in a welfare state do not even realize that the state is acting unjustly (according to the Bastiat definition).

Many over the years have supported also the right to secede. Abraham Lincoln, at one point in his career, also believed in such a right:

> Any people anywhere being inclined and having the power have the right to rise up and shake off the existing government, and form a new one which suits them better. This is a most valuable, a most sacred right—a right which we hope and believe is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion

[12] Frédéric Bastiat, *The Law* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1950), p. 21.

[13] For an ethical analysis of redistribution, see Bertrand de Jouvenel, *The Ethics of Redistribution* (Indianapolis: Liberty*Classics*, 1990).

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> of such people that can may revolutionize and make their own so much of the territory as they inhabit.[14]

Obviously, Lincoln's view on secession changed as the Civil War approached. Lenin also supported the right to secede: "[S]ocialism must necessarily establish a full democracy and, consequently, not only introduce full equality of nations but also realize the right of the oppressed nations to self-determination, i.e., the right to free political separation. . . . [F]ree union is a false phrase without the right to secede."[15]

Some theorists have recognized a partial right to secede. Anthony Birch states that one of the following prior conditions must be present for secession to be justified:

(1) the seceding region was included in the state by force and its people have displayed a continuing refusal to give full consent to the union;
(2) the national government has failed in a serious way to protect the basic rights and security of the citizens of the region;
(3) the democratic system has failed to safeguard the legitimate political and economic interests of the region, either because the representative process is biased against the region or because the executive authorities contrive to ignore the results of that process; or
(4) the national government has ignored or rejected an explicit or implicit bargain between sections that was entered into as a way of preserving the essential interests of a section that might find itself outvoted by a national majority.[16]

Even Stalin considered secession legitimate, with certain qualifications:

> A nation has the right freely to determine its own destiny. It has the right to arrange its life as it sees fit, without, of course,

[14] This excerpt is taken from Lincoln's "If You Can Secede You May" (Mexico) speech, cited in Rupert Emerson, *From Empire to Nation* (Cambridge, Mass.: Harvard University Press, 1967), p. 450.

[15] V. I. Lenin, in *Collected Works* (Moscow: Progress Publishers, 1964), vol. 22, p. 143.

[16] Anthony H. Birch, "Another Liberal Theory of Secession," *Political Studies* 32 (1984): 596–602.

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> stamping on the rights of other nations. That is beyond dispute. . . . It even has the right to secede. But this does not mean that it should do so under all circumstances, that autonomy, or separation, will everywhere and always be advantageous for a nation.[17]

The Justice of Secession

When is secession justified? In a word—always. There is no legitimate reason for preventing people from having the government of their choice, even if their choice is a poor one. Government is legitimate only to the extent that it exists by the consent of the governed. To argue against secession is to argue against the right of individuals to have the government of their choice. Although secession is always justified on theoretical grounds, there are technical problems that must be resolved. How, exactly, is secession to be achieved? Should it be unilateral or must all parties agree, those leaving as well as those who are being left? What unit is appropriate? A state? A portion of a state? A county? A village? A household? An individual?

Ludwig von Mises has the following opinion:

> The right of self-determination in regard to the question of membership in a state thus means: Whenever the inhabitants of a particular territory, whether it be a single village, a whole district, or a series of adjacent districts, make it known, by a freely conducted plebiscite, that they no longer wish to remain united to the state to which they belong at the time, but wish either to form an independent state or to attach themselves to some other state, their wishes are to be respected and complied with. This is the only feasible and effective way of preventing revolutions and civil and international wars.
>
> However, the right of self-determination of which we speak is not the right of self-determination of nations, but rather the right of self-determination of the inhabitants of every territory large enough to form an independent administrative unit. If it were in any way possible to grant this right of self-determination to every individual person, it would have to be done. This is impracticable only because of compelling technical considerations, which make it necessary that a region be governed as a single administrative unit and that the

[17] Josef Stalin, *Marxism and the National and Colonial Question* (London: Lawrence and Wishart, 1936), p. 20.

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> right of self-determination be restricted to the will of the majority of the inhabitants of areas large enough to count as territorial units in the administration of the country.[18]

Mises approaches, but does not cross, the fine line separating archy from anarchy. While acknowledging that individuals have the right to live under the government of their choice, Mises stops short, for technical reasons, of recognizing the right of every individual to secede. Murray Rothbard would go beyond the Misesian line and into anarchy.

> Would a laissez-fairist recognize the right of a region of a country to *secede* from that country? Is it legitimate for West Ruritania to secede from Ruritania? If not, why not? And if so, then how can there be a logical stopping point to the secession? May not a small district secede, and then a city, then a borough of that city, and then a block, and then finally a particular individual? Once admit *any* right of secession whatever, and there is no logical stopping-point short of the right of *individual* secession, which logically entails anarchism, since then individuals may secede and patronize their own defense agencies, and the state has crumbled.[19]

II. THE KENDALL AND LOUW SOLUTION

Once one concludes that secession is a legitimate remedy for righting wrongs, the next question is one of mechanics: Who should be able to secede, and how should secession be accomplished? Frances Kendall and Leon Louw provide a workable solution.[20] While the Kendall and Louw model is designed for South Africa, it could easily be used by the national and sub-national governments of any country that allows its citizens a voice in the government. Their solution is especially appropriate for emerging democracies, since these countries are trying to determine the form their new governments will take.

[18] Ludwig von Mises, *Liberalism*, third edition (Irvington-on-Hudson, N.Y., Foundation for Economic Education, and San Francisco: Cobden Press, 1985), pp. 109–10.

[19] Murray N. Rothbard, *Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982), p. 181.

[20] Frances Kendall and Leon Louw, *After Apartheid: The Solution for South Africa* (San Francisco: Institute for Contemporary Studies, 1987).

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First, secession should be built into the constitution, and second, secession should be unilateral. The group wishing to secede should not need the permission of the political entity it wants to secede from. Had this provision been clearly present in the U.S. Constitution,[21] it could have prevented more than a half million needless deaths.[22] Third, the method by which secession can be achieved should be clearly spelled out.

The Kendall and Louw approach combines all these features. Article XVI of their proposed Bill of Rights, for example, provides that "[e]very canton has the right to secede from the country upon a declaration of secession being approved by not less than 80 percent of its registered voters, whereupon it shall become a sovereign independent state in accordance with international law."[23] There is an immediate problem with this wording, however: Kendall and Louw suggest that secession can take place only in the event that at least 80 percent of all registered voters approve it. Were such a high percentage included in the U.S. Constitution, it is doubtful that the South would have voted to secede in the 1860s, since a large percentage of Americans choose not to vote and many Southerners

[21] Some commentators maintain the right to secede was taken as self-evident by the framers of the U.S. Constitution, and hence a provision providing for secession was not included. See Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kans.: University Press of Kansas, 1985), p. 281; and Gottfried Dietze, *The Federalist: A Classic of Federalism and Free Government* (Baltimore: Johns Hopkins Press, 1960), p. 283. There is also the argument, prevalent before the Civil War, that the right to secede is guaranteed by the Tenth Amendment. "The right of secession is not something . . . outside of and antagonistic to the Constitution. . . . So far from being against the Constitution or incompatible with it, we contend that, if the right to secede is not prohibited to the States, and no power to prevent it expressly delegated to the United States, it remains as reserved to the States or the people, from whom all the powers of the General Government were derived." Jefferson Davis, *The Rise and Fall of the Confederate Government*, cited in H. Newcomb Morse, "The Foundations and Meaning of Secession," *Stetson Law Review* 15 (1986): p. 424.

[22] 610,222 American lives were lost in the American Civil War (the term "War Between the States" might be more appropriate, assuming the states had the right to secede), compared to 126,000 in World War I, and 408,300 in World War II. As a proportion of the population, U.S. Civil War deaths were even higher: 17,093 per million of the U.S. population, compared with 1,313 for World War I and 3,141 for World War II. See Theda Skocpol, *Protecting Soldiers and Mothers* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1992), p. 570. Thus, failure to include a secession provision in a constitution can be very costly.

[23] Kendall and Louw, *After Apartheid*, p. 217.

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were opposed to secession. A more realistic provision might be to reduce the needed percentage to 70 or two-thirds and to make the relevant population that of total votes cast rather than eligible voters.

Article XVII of the Kendall and Louw Bill of Rights states that "[e]very canton and every part of a canton may, by referendum, as provided in the Constitution, break away from or amalgamate with any other canton." The referendum provision is contained in Article IV. The relevant section states:

> No canton boundary may be changed, including splitting from or amalgamating with another canton, unless approved by a majority of all the registered voters directly affected thereby. If part of a canton wishes to split from an existing canton, the citizens in the remainder shall not have a vote in the referendum. But if that part is to amalgamate with or be incorporated into another canton, all the citizens of the latter shall be entitled to vote in a separate referendum.[24]

If the citizens thus want to form their own canton or merge with another canton, a smaller-percentage approval is needed than if they desire a total separation to form a new country. Also, the vote for a breakaway is unilateral; the canton that stands to lose population has no say in the matter. If a group of citizens wants to join an existing canton, though, both groups must approve the change. This requirement seems fair, since both groups stand to be affected by the change.

Once the right to secede is admitted, there is no logical stopping point. If a defined group such as a canton, district, or village has the right to secede, so do individuals within those political units. Neither groups nor individuals should have a government forced upon them. Government derives its authority from the consent of the governed and any government that does not have that consent is illegitimate. This view implies that no government is completely legitimate unless 100 percent of its citizens consent to be governed by it, which is extremely unlikely. Kendall and Louw offer an approach that partially gets around this dilemma. Article VI(iv) of their proposed Bill of Rights states that "[a]ny landowner or group of landowners whose land is on a boundary between cantons may opt at any time for the boundary to be adjusted so as to place such land under the jurisdiction of a neighboring canton, subject to the agree-

[24] *Ibid.*, pp. 218 and 215.

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ment of that canton."[25] Individuals, then, while not being able to secede to form their own country, can secede to become part of a neighboring canton. This provision, while not going all the way to fully legitimate government, at least gives individuals a choice if they happen to live on the boundary.

While it may seem that this provision would have only a marginal effect on the behavior of government, it could be quite important. Consider, for example, the state governments of Massachusetts and New Hampshire. Taxes in Massachusetts are among the highest in the U.S. New Hampshire, on the other hand, has no individual income tax. Businesses and individuals have been moving out of Massachusetts for years because they feel they are being exploited by the government's taxing authority. What would happen if the citizens of these two states, which are contiguous, were allowed to secede along the lines of that suggested by Kendall and Louw?

In all likelihood, at least some of the individuals who live on the Massachusetts side of the border would opt to become part of New Hampshire. It is quite plausible that the New Hampshire–Massachusetts border would start moving south. But that is not the end of the matter, since Vermont, New York, Rhode Island, and Connecticut also share a border with Massachusetts. If the government officials of Massachusetts were to continue to tax their citizens excessively, the borders of Massachusetts could shrink in all directions, such that Massachusetts would cease to exist. That very possibility would place enormous pressure on the government of Massachusetts to lower its taxes. If every state had such a secession provision, it might be the case that each state cuts its taxes in the hope of attracting citizens from neighboring states, and preventing its existing citizens from entertaining thoughts of leaving.

Adopting such a provision in the U.S. Constitution seems highly unlikely, since most citizens believe the Civil War decided the issue of secession once and for all. Of course, a number of powerful special interests would be against such a proposal as well. The emerging democracies of Eastern and Central Europe, Africa, Asia, and Latin America have no such mental handicap, however. They could very easily adopt the Kendall and Louw provisions, which would be especially enticing in countries with diverse ethnic, racial, or religious populations, such as South

[25] *Ibid.*, p. 216.

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Africa, India, Yugoslavia, and the former Soviet Union. Such a provision could prevent civil war and thousands of needless deaths.

III. SOME PROBLEMS OF IMPLEMENTATION

Secession presents a number of practical concerns. For example, this paper advances the position that individuals have the right to secede, unilaterally, any time they want for any reason they want. Having the right to secede does not mean that it can be exercised peacefully, however. In the U.S., of course, the attempted exercise of this right in 1861 led to the deaths of more than a half-million people. Thousands were killed during the partitioning of India and Pakistan, and the secession of Croatia and Slovenia from the former Yugoslavia is also proving costly in loss of life and destruction of property. If the state from which a group is seceding does not consent, secession can be both costly and unsuccessful. There is no easy solution to this problem. The United Nations can bring diplomatic pressure to bear.[26] Individual nations or groups of nations can also bring political and economic pressure, through such measures as trade sanctions.[27] But measures such as these only serve to punish all sides to the dispute without bringing the problem to a successful resolution. There is also the problem that some nations will support the seceding faction and others will support the state being seceded from, which could serve to prolong the dispute and widen it into a regional (or worldwide) conflict.[28]

Part of the difficulty in applying the theory of secession is that most states do not accept the general principle that those who are dissatisfied

[26] U.N. actions have usually proven to be ineffective. Bangladesh is a case in point. See Buchheit, *Secession: The Legitimacy of Self-Determination*, p. 209. Besides, there is no assurance that the U.N. would side with the seceding group.

[27] President Bush and the European Economic Community, for example, threatened economic sanctions if Yugoslavia split up. The U.S., France, and Britain also warned that they would not recognize the Slovenian and Croatian secessions, while Germany and Austria were less adamant. Bush was also slow to support the right of the various Soviet republics to self-determination.

[28] In the Bangladesh secession, for example, the Soviet Union supplied arms to India while China provided support to Bangladesh. The U.S. supplied arms to both sides for a while, which enabled the combatants to carry on the struggle a bit longer than would otherwise have been the case. Buchheit, *Secession: The Legitimacy of Self-Determination*, p. 209.

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with the present regime have the right to abandon it. Indeed, governments typically feel threatened when a faction in one country attempts to secede, fearing that the sentiment could spread to a portion of their own population. Even constitutional protection of the right to secede may not be sufficient. The Soviet Constitution permitted secession, yet Gorbachev sent troops to several Soviet Republics to prevent the citizens from exercising this constitutional right. If the right to secede is violated in a state that guarantees the right in its constitution, how much more difficult would it be to exercise the right in a state that does not guarantee the right?[29]

Another problem is how to protect the rights of groups that become minorities in the newly created states. Hindus who remain in Pakistan or Bangladesh, Moslems who remain in India, the Russian minority that remains in Lithuania, Latvia, Estonia, and other former Soviet republics, Croatians who remain in Serbia, Serbians who remain in Croatia—all have less protection against the majority after secession.[30] A substantial minority before the secession, they are a much smaller and weaker minority after secession. The new state that is formed after secession may decide to oppress such a minority. But this is not a secession problem per se, but a human rights violation. The oppression of a minority may exist before the secession as well—that is often why a group decides to secede in the first place. Secession alone does not result in the oppression of a minority, although it may make things worse for those who stay behind. Although these remaining minority group members might actually become more oppressed after secession, it does not follow that the right to secede should be denied to those who want it. These are two separate issues.

Another concern, as Mises pointed out, is that the seceding group must be large enough to form an independent administrative unit.[31] But only

[29] Curiously, the U.S. eventually recognized the right of the Soviet republics to secede, although a previous U.S. regime (Lincoln's) denied the right to its own citizens, a fact that the Soviet leader Gorbachev pointed out on several occasions.

[30] One reason Serbia fought Croatia's attempt to secede is the fear that the 600,000 Serbs living in Croatia (11% of Croatia's population) will suffer discrimination. Also, Serbia does not want to lose the wealth that is in Slovenia and Croatia. One reason Slovenia and Croatia want to secede is because of the perception that their finances are being eroded by the Serb-dominated bureaucracy.

[31] Mises, *Liberalism*, pp. 109–10.

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that group can decide what the size of this unit should be. Allowing outsiders to decide whether some group should be permitted to secede would violate the group's rights, since certain individuals might, under some circumstances, be forced to live under a regime they find abhorrent. Furthermore, the concept of an independent administrative unit assumes that a governing body must be a certain size in order to supply the services that governments should provide. But what services should a government provide? Some people want government to provide a comprehensive set of services, including cradle-to-grave welfare, free education for all, old age pensions, health care, and so forth. A government that provides comprehensive services such as these must be fairly large in order to spread the cost over a large population. The administrative unit could be much smaller if those wishing to secede do not want to carry the burden of a large administrative state. If they are content with a minimal state that protects only life, liberty, and property, the unit could be very small indeed.

Even if the administrative unit can be precisely defined, it is unlikely that everyone within that unit will want to secede. While large majorities of some of the former Soviet republics voted to secede, the vote was not unanimous. Some citizens wanted to remain part of the Soviet Union and would be worse off, in their own subjective view, if the administrative unit where they lived seceded. There is no way to resolve this problem fully. Some of those who voted in the minority can move out, but some cannot, and even those who move must suffer the costs of doing so. It would not be just, however, to prevent a majority from exercising its will to secede just because that majority constituted less than 100 percent of some relevant population. The problem inherent in any democracy is that the minority does not always get everything it wants. In a liberal state, though, minorities have equal rights with the majority.

Secession of Political Sub-Units

Most treatises on secession address the issue at the national level. But secession at lower levels may also be justified on philosophical grounds. Some western counties of Virginia seceded from Virginia during the Civil War and formed a new state, West Virginia. If residents of northern California want to break away from California, or if southern New Jersey wants to break away from New Jersey, there is no reason why they should be prohibited from doing so.

Consider Staten Island, one of the five boroughs of New York City.

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Staten Island residents recently felt they were being shortchanged by being part of New York City and many of them wanted to secede and form an independent City of Staten Island. A study showed that an independent City of Staten Island could be fiscally independent, projecting a 3 percent budget surplus in the first year—sufficient to eliminate the corporate and bank taxes presently levied on local businesses by New York City. An independent Staten Island could also reduce the local sales tax by one cent or lower property taxes by 10 percent, or it could hire about 500 extra police, firemen, or teachers.[32] One proposed method to bring about secession was by constitutional amendment:

> The New York State Constitution can be amended so as to free Staten Island from New York City by the passage in both houses of the Legislature, at two separately elected legislative sessions, of a proposed constitutional amendment. The New York State Constitution provides that upon such passage, the proposed amendment must be submitted to the people (of the entire state) for approval. (Article XIX§1 New York State Constitution) If approved, such amendment shall become a part of the Constitution on the first day of January next after such approval. This procedure does not require the Governor's approval, nor does it require an act of the City Council or Mayor.[33]

New York State Senator Marchi introduced legislation allowing Staten Island to become an independent city and the Senate actually passed the bill, but it never became law. New York City's mayor opposed the secession move because "New York City has been a five-county federation since 1898. Each borough makes a unique contribution to the development and continued success of the City of New York."[34] This statement

[32] Elizabeth Kilbert, "Staten Island is Voting, but It's Only a Sitcom Secession," *New York Times*, March 11, 1990, p. 22E. According to one poll, 96 percent of Staten Islanders want to secede from New York City. See *Remedies of a Proud Outcast: The Legal Probability and Implications of Restructuring the Government and Boundaries of the City of New York*, New York State Senate Finance Committee Staff Report, July 1983, pp. 3 and 20.

[33] *Remedies of a Proud Outcast*, pp. 19–23. Other methods were state legislative action or a revision of New York City's charter.

[34] Memorandum in Opposition, issued by James Brenner, Legislative Representative, City of New York, Office of the Mayor, March 29, 1989. In other words, Staten Island should not be able to secede because New York City as a whole wants to exploit the resources that Staten Island has to offer.

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gives no good reason at all why a dissatisfied segment of a political unit should not be able to leave and form a new political unit that is more to its liking. It is somewhat like a plantation owner telling his slaves they cannot leave because their ancestors have worked his plantation for three generations and they make a unique contribution to the development and continued success of his plantation. If Staten Island wants to secede, it should be able to, and New York City should not be able to prevent or delay the change.[35]

Staten Island is only one of a number of examples in which one political entity wants to secede and either form a new entity or merge with an existing entity. Residents of Greenburgh in Westchester County, New York threatened to secede because they did not want a housing project scheduled to be built for the homeless, while residents of Mount Olive Township, New Jersey wanted to secede from Warren County to protest a landfill scheduled for their town.[36] In another New Jersey case, some residents of Essex County wanted to break away and become part of neighboring Morris County. The desire to secede arose because the welfare system in the city of Newark (located in Essex County) did not have sufficient funds to pay for all the promises made by Newark politicians. A tax increase was needed, so a property tax increase was assessed on the citizens of Essex County, including many affluent homeowners in the suburbs who could not vote in the Newark city elections. In many cases, their annual property taxes increased by more than $1,000. At least one Essex County politician who advocated the increase was voted out of office at the next election, but the tax increase was not repealed. Had these disgruntled taxpayers been able to join Morris County, they could have avoided being exploited by the Newark politicians who did not represent their interests.

Secession as a Tool to Restrain Government Excesses

Balanced budget amendments, line-item vetos, and term limits can be used as tools to restrain government excesses. So can the threat of seces-

[35] Admittedly, the analogy of slaves and a plantation owner is not perfect. The plantation owner owns the land, so the slaves would have to vacate the premises, whereas Staten Island residents would not have to move because they already own or rent the land they are on.

[36] Kilbert, "Staten Island Is Voting."

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sion. If politicians know that a portion of their constituency can leave, they will be less likely to neglect their needs. More importantly, citizens will have a choice. They will no longer have to move if they do not like their local, county, or state government. They will be able to change their political affiliation by seceding, just as West Virginia did during the Civil War.[37]

One way to protect this right is by Constitutional amendment. Such an amendment should be clearly worded, so the procedures for secession are clear, and it should be unilateral—the segment of the population seceding should not have to ask anyone's permission. Kendall and Louw have proposed such a solution for post-apartheid South Africa; if a political sub-unit wants to break away and form its own state (canton), it may do so without the permission of the state it plans to leave. But if the political sub-unit of one state wants to become part of another state, both groups must approve.

What is the smallest political unit that can secede? Theoretically, as discussed above, the smallest unit that can secede is an individual. Any other answer results in injustice to anyone who is forced to be part of a political affiliation he does not wish to be a part of. The chances of passing a constitutional amendment allowing for individual secession are of course slim. Kendall and Louw have found a partial solution to this dilemma, by allowing "any landowner or group of landowners whose land is on a boundary" to secede and join the political unit that is across the street.[38] Allowing individuals to secede and join another city, county, or state could lead to some interesting results, by the way. If some businesses on the New York City side of the Hudson River felt they were being overtaxed, they could secede and become part of New Jersey, where taxes are lower. Thus, their property would become within the borders of New Jersey. Once they became part of New Jersey, their neighbor's property would be on the New Jersey border, and the neighbor would have the same option. All the Broadway theaters in New York City could become part of New Jersey in a very short time, since they are all on the west side of New York, just a few blocks from the Hudson

[37] To be precise, the citizens of West Virginia seceded from Virginia not because they felt exploited by Virginia, but because they supported the Union rather than the Confederacy.

[38] Kendall and Louw, *After Apartheid*, p. 216.

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River. Theater owners would benefit by the move because their property- and income-tax bills would be cut. The market value of their property also would likely increase, since property that is located in a low property and income tax area is more desirable than property in a high-tax area, all other things equal. But New York residents would also benefit because the theaters would be able to charge (lower) New Jersey sales taxes on the tickets they sell.

IV. CONCLUSION

The theory of secession has come alive in recent months with the secession of the former Soviet republics and the break-up of the Soviet Union. Secession, however, while acting as a release valve to relieve political pressure, is not a perfect solution that can be used to resolve all cases where one group does not like its present system of government and cannot change that form through the ballot box. One of the major problems is how to protect the rights of dispersed minorities who are left behind when a concentrated group of their compatriots secedes. Of course, in a liberal state, the rights of all are protected equally regardless of minority or majority status. But not all states are liberal states.

The Kendall and Louw solution makes it possible to carry secession down to very low levels, but this solution only applies to parties who live on the border, doing nothing to resolve the problem of groups that are dispersed. These individuals must either remain content with the present regime or vote with their feet, if they can. By permitting individuals on the border to secede, however, the Kendall and Louw solution also acts as a restraint on the incumbent regime, which cannot get too far out of line with the wants and needs of its citizens without risking the real possibility of having its territory shrink. This solution can be used by any regime with a diverse population. Yugoslavia is one of the best examples, since its population has many of the same political cleavages as Switzerland. Under a Kendall and Louw-type solution, Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Macedonia, Voyvodina, Kosovo, and Montenegro would all start as separate cantons. Any citizen living on a border (or a business establishment on the border) may then decide to join a neighboring canton. This would go a long way toward solving the problem of the disputed territory that Serbia took from Croatia when the federal troops were sent into Croatia. It could also be expanded to include the possibility that individuals on the border of a foreign country

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(the former Yugoslavia is bordered by Italy, Austria, Hungary, Rumania, Bulgaria, Greece, and Albania) could elect to secede from their canton and join the foreign country that is across the street.

Yugoslavia has many pockets of concentrated minorities who do not stand to gain much from the Kendall and Louw border option because they are enclaves within one of the Yugoslavian republics. Why should they not be able to become part of another Yugoslav republic, or even of a foreign country that borders Yugoslavia? What difference does it make that they are not on a border? If Hawaii and Alaska can join the U.S., although separated from the contiguous states by many hundreds or even thousands of miles, could an enclave of Albanians not become part of Albania, or an enclave of Bulgarians become part of Bulgaria? As long as there is free movement of people and goods, the fact that the different parts of Albania might be separated by a few miles of Yugoslavia should be no problem at all. That is better than being separated by hundreds of miles of India, which was the case when East and West Pakistan seceded from India.

A number of other problems with secession remain, and some of them are not easily solved. If the state you want to leave does not want you to go, the results can be bloody. The fact that the right to secede might be guaranteed in the constitution does not necessarily mean that the right will be respected. There is also the question of individual secession. Unless there were free and open borders between sovereign nations, the possible trade and tariff barriers that would result from such small states would have an adverse effect on the standard of living. Furthermore, with an administrative unit that consists of a single individual or family, there would be no way to distribute the cost of social problems among other taxpayers. Any individual who decided to secede would have to be self-supporting, because there would be no one to pay for the services they want but themselves.

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WOODROW WILSON'S DEFEAT IN YUGOSLAVIA: THE END OF A MULTICULTURAL UTOPIA

Tomislav Sunic

> Es sollte zugleich die Ansicht wachsen, dass ein dritter Weltkrieg, wenn auch nicht unwahrscheinlich, so doch nicht unvermeidlich ist.
>
> —Ernst Jünger, *Uber die Linie*, 1950

The violent breakup of Yugoslavia illustrates the growing difficulty of theorizing about the future of multi-ethnic states. Who would have predicted that Yugoslavia, which until recently had been hailed as a "model multi-ethnic socialist state," would come to an end, only seventy-three years after it was created? Predictably, the much-vaunted liberal models for multi-ethnic states, such as "power sharing," or consociationalism," will have little attraction in an environment in which different ethnic groups can no longer live together.[1] Whether their wish for independence, even when supported by the majority of their ethnic voters, will be welcomed by multi-ethnic America or the multinational United Nations, remains to be seen. Slovenia's, Croatia's, and Bosnia's self-proclaimed and bloody departure from Yugoslavia had little legally binding value, so long as they did not receive the blessing of the U.S.

[1] Arend Lijphart, "The Power-Sharing Approach," in V. Montville, ed., *Conflict and Peacemaking in Multiethnic Societies* (Lexington, Mass.: D.C. Heath, 1990).

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The American belief that the collapse of communism in the Soviet Union and Eastern Europe would miraculously bypass the Yalta-drawn borders and bring about the "end of history," needs to be revised. To applaud the end of communism, yet to sermonize about the inviolability of European borders which were drawn in 1919 by Versailles treaty architects, and then in 1945, by their Yalta successors, does not sound very convincing. If America is ready today to adapt itself to a new post-communist reality, it follows that it should also accept a new geopolitical reality. One much not rule out the possibility that American and Atlantic fantasies about multi-ethnic and economic integration may be paralleled by a further Central and East European slide into disintegration, calling into question the security of the entire European continent.

I. YUGOSLAV CIVIL WAR OR A SERBIAN WAR OF AGGRESSION?

Since June 1991 the American administration has viewed the conflict in the former Yugoslavia as a "civil war" pitting secessionist Croatia against the Yugoslav center, Serbia. To call the war in the former Yugoslavia "civil" was quite in line with American globalist rhetoric. In the eyes of the American media, a "civil war" was taking place within the internationally recognized Yugoslav state. American geopolitical concerns also played a role. Washington was not willing to shrug off a country it had helped create in 1919, and which it provided for decades with all the necessary legitimacy and legality. Both as a Serbian-dominated monarchy, and later as Tito's communist non-aligned pseudo-federation, Yugoslavia enjoyed an excellent relationship with America. In addition, Yugoslavia was a full member of various international organizations and regimes, including the United Nations.

Also, from the sociological point of view, multi-ethnic America could not dismiss a country which in many instances was a smaller replica of the American melting pot. If Croatia is allowed to walk away, why not tomorrow allow Southern California or Arizona to merge with Mexico? From historical and demographic perspectives, nobody can prevent today's or tomorrow's Mexican Americans from invoking similar "democratic rights to self-determination."

The American view of the war in former Yugoslavia as "civil" was further justified by the fact that whenever a war breaks out in an internationally recognized state—even when a conflict involves two distinct geographic

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and ethnic components within this state—it is perceived as a "civil war". The U.N. charter explicitly forbids other foreign powers from meddling into the affairs of a country where such "inter-ethnic" conflict may take place.[2] It did not come as a surprise, therefore, when following the Yugo–Serbian armed aggression against Slovenia and Croatia in late June 1991, and against Bosnia in April 1992, America announced that it would provide "good offices," declaring itself willing to be an "honest broker," reassuring repeatedly the Croatian and Bosnian victims, as well as the Serbian aggressor, of American neutrality and impartiality.

Under pressure from America, and under pressure from their own multi–ethnic environments, Spain, England, and France copied the similar American position; that is, the Yugoslav peoples need to "talk with each other," and their federation must somehow be preserved.[3] The fact that the European Community kept inviting both Serbian and Croatian leaders to the negotiating table at the peace conference in The Hague and Brussels, only illustrates the European Community's own fears of a similar "Balkanesque" environment within its own house. Naturally, those conferences only gave Serbia more time and more reason to continue devouring chunks of Croatia and Bosnia. Even today, the idea that the former Yugoslav melting pot could be salvaged as a loose association of independent states, albeit under a different name, prevails in America and the E.C. Must it be recalled that for decades the French and American media portrayed Serbia (and Serb-run Yugoslavia) as a valiant ally in the First and Second World Wars?

With the Serbian invasion of Bosnia in April 1992, the war in the Balkans took a very ugly turn, and as it gradually became clear that Serbia, under the pretext of trying to salvage Yugoslavia, was paradoxically destroying it, America began to change its tune. America's decision to swallow the definite break-up of Yugoslavia, as well as its criticism of its pivot, Serbia, was primarily motivated by the world-wide reports of Serbian atrocities, and of Serbian detention camps in Bosnia and Hercegovina.[4]

[2] United Nations Charter, Articles 2(4) and 2(7). See also R. J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974), pp. 233–77.

[3] "Yugoslavia Country Report," published by *The Economist Intelligence Unit*, no. 3, 1991, p. 7.

[4] "Not Quite Belsen," *The Economist*, August 15–21 1992.

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II. AMERICANISM AND YUGOSLAVIANISM: THE ENDLESS LEGALISM

In contrast to its previous active engagement in the Gulf War, the Bush Administration first took a surprisingly low-key approach to the conflict in former Yugoslavia. The U.S. pledged in July 1991 that it would cede the mediation of the Yugoslav conflict to the European Community, and that it would accept a formula negotiated and approved by the European Community. Yet all European countries continued, and still continue, to have a confusing view of the crisis in former Yugoslavia, and their approaches to solving it range from rhetorical air strikes on Serbian targets to wait-and-see tactics. Only the German government denounced the Serbian aggression—although it prudently refused to commit its own troops to the former Yugoslav republics.

Neither America nor the European Community was willing to see Germany play a stronger card in the Balkans—except, of course, when Germany pays the military cost or takes hundreds of thousands of Balkan refugees. It suffices to recall that when in 1991 the German Minister of Foreign Affairs, Hans D. Genscher, sounded the alarm and accused Serbia of the escalation of violence, the American government cautioned against "German unilateral moves," arguing that such German action could ruin European Community mediation and lead to the spreading of the bloodshed to Kosovo and Macedonia. To some extent, aside from the issue of the recognition or nonrecognition of Croatia and Slovenia, the idea still prevails in Washington that the responsibility for the conflict is shared by both Serbia and Croatia, and that the only way the conflict could be resolved is through endless negotiations.

When the U.N. peace initiative, headed by the former high-ranking American official Cyrus Vance, got under way in December 1991, one had the impression that this initiative was primarily decided as the American move to block German involvement in the Balkans, rather than as a serious effort to broker a lasting cease-fire.

Other European Community members followed the American lead. On the surface their argument was that with its recognition of the new states, Germany was adding fuel to the fire and reviving the demons of 1941. The real reasons why they failed to act swiftly and together with Germany appear to be more complex. By its recognition of Croatia and Slovenia in December 1991, Germany was effectively showing that it best understood what was going on in the Balkans. Moreover, the German

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attitude towards the Balkan crisis only exposed the flawed legacy, not only of Yalta, but of Versailles, too. America, France, and England must, ironically, realize today that the country they created *ex nihilo*, in 1919, and recreated *ex nihilo* in 1945, never had any legitimacy, and therefore could never function as a democracy. This time, Yugoslavia is not being destroyed by the proverbial "böser Deutsche". This time, it is the French and American darling "böses Serbien" that is mercilessly destroying the Versailles architecture and its bizarre multi-ethnic foundations.

Nobody in America is willing to countenance an assertive Germany engaging in unilateral diplomacy and acting in the area of Europe where German involvement is seen by many American politicians, let alone by the Serbian media, as an outright Fourth Reich meddling in Yugoslav affairs. Thus, on the eve of the German recognition of Croatia, American Deputy Secretary Lawrence Eagleburger issued a "stern warning" to the twelve E.C. countries not to follow Germany's example in recognizing Croatia and Slovenia.[5]

Some American commentators have suggested that America was opposed to the recognition of Croatia because officials in the Bush administration, like "Lawrence (of Serbia)" Eagleburger, and Brent Scowcroft, had extensive financial ties with Serbian communist circles in former communist Yugoslavia.[6] In view of this possibility, it is wrong to expect America and France to speed up any invasion of "Serboslavia"—a country whose territorial "integrity and unity" America had advocated for a good part of this century.

The Bush Administration's policy towards the Balkans must be seen as neither naive nor hasty. It was a very well-planned and well-thought-out policy which refused to divorce itself from Wilsonian moralism or Bush's "new world" ecumenism. The American political indecision, rather than stopping the conflict in the Balkans, encouraged the Yugoslav Army, and its ally Serbia, to go ahead with its aggression against Bosnia. Had America, the E.C., and the U.N. very early on recognized Croatia and Bosnia, or threatened the Yugoslav Army with military strikes, or both, the conflict would probably have never escalated to its later tragic dimensions. As sovereign and internationally recognized states, Croatia and

[5] "U.N. Fights Bonn's Embrace of Croatia," *New York Times*, December 14, 1991.

[6] Patrick Glynn, "Yugoblunder"; and "Lawrence of Serbia," *New Republic*, February 24, 1992.

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Bosnia would have not been treated as regions in an "ethnic" civil war with another region. In such a new international environment the Yugoslavia Army would have been deterred from further aggression. Instead, Serbia could interpret the E.C. disagreements, American indecision, and U.N. apoliticism to its advantage—while Croatia and Bosnia saw in it a flagrant rejection of their sovereignty and their newly won independence.

American refusal to distinguish clearly between aggressor and victim, between the "Schmittian" *hostis* and *amicus*, rather than slowing down the Serbian aggression, gave green light to future Serbian aggression. The American diplomats made a mistake twice: They clung to the idea of Yugoslavia even when it became clear that Yugoslavia could no longer be held together, and they failed to back up German diplomacy which could have best assessed the new geopolitical tremors in the Balkans and best seen the futility of keeping artificial states together by force. American and European Community blunders seem to have been prompted more by deeply flawed parallels between pre-war Germany and today's Germany, than by any genuine interest in solving the Yugoslav crisis.

III. THE CONCEPT OF THE POLITICAL REVISITED

The war in Croatia and Bosnia, which has resulted in death and destruction on a scale unparalleled in Europe since World War II, points to the necessity of reassessing the notion of politics and sovereignty. Moreover, it requires a new definition of democracy in a multi-ethnic state. In the post–Cold War world, in a somewhat utopian fashion, the U.S. and the E.C. shrugged off the possibility of war on the European continent. When a war did break out in the former Yugoslavia, it took them months to define it, let alone stop it through resolute military action. Liberal inability to think in terms of classical power politics, and an unwillingness even to assume that Europe may be plagued by the ghost of the past, naturally led to political paralysis. America has lacked a clear vision of how to deal with a post-communist Eastern Europe. America first magnified the importance of preserving Yugoslavia; then, it urged the E.C. to solve the crisis, who with the best intentions could not bring about any cease-fire; and finally, America and the E.C. passed the torch to the apolitical U.N.

Paradoxically, the American recognition of Croatia and Slovenia signalled a European and American disengagement from the Yugoslav

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crisis, precisely at the time when America and Europe should be working towards new security arrangements for all of Europe.[7]

Why did Europe and America fail to resolve the conflict quickly when it became clear, a long time ago, that Yugoslavia could no longer be held together? It appears that the long-standing neutral and aloof American attitude towards the Yugoslav crisis has complex geopolitical, economic, and historical roots.

Since Yalta both Eastern and Western Europe have played a minor role in foreign politics. "High politics" was the privileged ground of the two superpowers, with their respective policies of double containment. The Soviet Union and America contained each other, but they also contained their own respective allies and satellites. America was not just containing communism in the East; America was also containing Europe and its main pivot in the West, Germany.[8] It should therefore come as no surprise that during the Cold War, not a single European country was willing or able to engage in "high politics." Neither France, nor Britain, let alone Germany, was in a position to create an all-out European foreign politics and handle crisis spots in Europe or elsewhere. After the end of the Cold War, after the end of bipolarity, and with the Balkan tragedy unfolding, Europe was totally unprepared for the role of a unified arbiter. Be it in the realm of creating European military security, or in developing its common politics towards crisis, Europe has always had to ask for prior American blessing. This ultimately led to European paralysis and to frequent American criticism of unilateral diplomacy, as was seen in the case of American criticism of the German recognition of Croatia. In such a "depoliticized" Europe, it did not take long to understand that European indecision in regard to the war in former Yugoslavia was only asking for a further Serbian war of aggression.

IV. THE RETURN OF HISTORY

The results of the war in the former Yugoslavia will certainly lead to an unparalleled historical revisionism regarding two world wars in Europe. Some German observers have pointed out that the Coatian fight for inde-

[7] Jonathan Eyal, "E.C. Baptism Turns to Debacle," *The Guardian*, January 16, 1992.

[8] Wolfram Hanrieder, *Germany, America, Europe: Forty Years of German Foreign Policy* (New Haven: Yale University Press, 1989).

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pendence indirectly challenged the legacy of Versailles and one of its crucial pillars, Serb-controlled Yugoslavia. Should Serbia lose in the Balkans, then the real winner of World War II, in a retroactive way, becomes Germany.[9] The disappearance of Yugoslavia is already causing different geopolitical shifts in Europe, in which Germany appears as the prime winner and France, America, and Britain as losers. America must be saddened by the dissolution of Yugoslavia. For America, Yugoslavia was a model multi-ethnic state, which aside from being a buffer zone in the East–West condominium, had also had a duty to weaken the natural German *glacis* in Central and Eastern Europe. With the dissolution of Yugoslavia, Woodrow Wilson suffered a serious defeat in Croatia.

From the American liberal and mercantile perspective, and according to the liberal belief in economic interdependence and ethnic integration, it makes little sense to discard larger units and encourage the emergence of smaller ones, especially if this results in the disruption of world trade. The behavior of American politicians continues to be motivated by a desire to deal with unitary multi-ethnic states, especially if those states house many intertwined minorities. It is certainly no accident that America was the last country in the West to recognize the futility of the Soviet Union and Yugoslavia. America preferred to deal with Moscow and Belgrade's communist "reformed" leadership, rather than with individual Soviet and Yugoslav anti-communist republics. This static and reactive foreign policy may have been prompted by reasons of international security and stability, but it was also prompted by the fear of Balkanization in America. Integration through economic ties, even at the price of keeping artificial states together, appears more worthy in the West than the advocacy of self-determination, especially if the right to self-determination impedes international trade and destroys Wilsonian and President Bush's new world ecumenism. Hence American reticence to denounce and punish the Serbian aggressor. Often times, when multi-ethnic states begin to break up, a geopolitical vacuum leads to larger rifts. American fears that the example of Croatia and Bosnia could be followed tomorrow by Quebec, New Mexico, or California are not groundless at all. The 1992 riots in Los Angeles clearly illustrate that the metaphor of the Balkans and Yugoslavia can surface in America any day and at any time. The imper-

[9] Viktor Meier, "Im Hintergrund Amerika, Die westliche Feindseligkeit gegen Kroatien und Slowenien," *Frankfurter Allgemeine Zeitung*, January 2, 1992.

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ative of negotiations may be preached to Croats and Bosnians, but negotiations are resolutely rejected by Monroe's and Wilson's grandsons. In April 1992 Bush did not pontificate about sending legal advisors or Bible preachers to pacify Los Angeles rioters. He sent elite soldiers instead.

The paradox of the twentieth century is that everybody talks about unity and integration while a little farther to the East—and tomorrow in the West—massive disintegration and ruptures appear everywhere. Secessions and the resurrection of ethnic identities do not bode well for the mercantile new world order and for its main ringleader, America. Although it may be too soon to speculate about the role of the nation-state, judging by the increasing number of states in the U.N. the concept of international law and the concept of sovereignty will urgently require a new *nomos* of the earth.[10]

In conclusion, one may say that the U.S. and the U.N., as much as they like to talk about European unity, may also be happy to see Europe rocked by occasional wars. Would it truly be in America's interest to see a unified Europe become a superpower? Is it truly in America's interest to see Europe politically unified around its main steamroller, Germany? Hardly. Every American politician knows well that a *politically* (and not economically) united Europe would rule the world. This is the reason why European technocrats, along with their American teachers, are trying today to solve a political crisis in the Balkans with nonpolitical and apolitical means. They are attempting to use mechanisms which, while valid in apolitical America, are totally inappropriate and ineffective in a highly politicized Central and Eastern Europe. Emphasizing "negotiations" and "compromise" in the area of the world where political decision is desperately needed amounts to ignoring the essence of the political as well as the essence of the crisis in the Balkans.[11] The decades-long American belief that Yugoslavia or Czechoslovakia, could be transformed into democratic states proved to be wrong. Yugoslavia could exist only as a Serb-dominated authoritarian or totalitarian country. "Democratic Yugoslavia" is a contradiction in terms.

Aside from the purely "Yugoslav" nature of the war in former Yugo-

[10] From the liberal perspective see, Morton Halperin and David Scheffer, "What Recognition of New Nations Really Means," *The Christian Science Monitor*, January 31, 1991. From an entirely different perspective, see Alain de Benoist's approach to "multi-ethnicism," "L'Idée d'Empire," in *Nation et Empire* (Paris: Acts of XXIV colloquium of the GRECE, 1991).

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slavia, one can also say that this war is also a European catharsis in which Germany's *Geschichtsbewältigung* is slowly, but definitely, coming to an end. Croatia and Germany have helped each other remove their own terror of history and their historical stigma of "bad guys." It goes without saying that both Croatia and Germany took advantage of each other's diplomatic decisions.

By contrast, the indecisiveness of Maastricht-Europe regarding resolution of the Yugoslav crisis only illustrated a growing European fear of any political decision. European "collective security" always depends on a prior blessing from America. The apolitical-economic-Maastrich-market-Europe is dangerously signaling that if serious crisis begins in Eastern Europe today, and in Western Europe tomorrow, European "high politics" and "high politicians," will not be available. The war in former Yugoslavia, as much as it has eloquently exposed the flaws of Versailles and Yalta, has also demonstrated the dangers of political and social Balkanization, both in Europe and America.

[11] For a theoretical approach to understanding political decision and "apolitical decision" within the European Community and the United Nations in regard to the Yugoslav crisis, one could still draw lessons from the classic by Carl Schmitt, *Der Begriff des Politischen* (Berlin: Duncker und Humblot, 1932).

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THIRD THOUGHTS ON CONTRACTING OUT

Bruce L. Benson

Like many libertarians, I used to accept without question the idea that contracting out for government services was a good idea. After all, it puts production back into the hands of relatively efficient private producers. However, after reviewing the literature on contracting out for law enforcement services (Benson 1990, pp. 179–99), I had some second thoughts, concluding that while contracting out might solve some problems of government inefficiency, other more serious problems would remain. Nonetheless, I continued to cling to the idea that contracting out was better than nothing, noting (pp. 195–96) that

> the major criticisms of the government production of law and order are not alleviated by contracting out. One problem—bureaucratic inefficiency—may be partly overcome if corruption and the bureaucratic tendencies for over-regulation do not eventually destroy the potential for such benefits. But, the other problems remain. Private firms under contract to the government will produce what interest groups want, not what individual taxpayers want. And contracting creates *new* interest groups—the contracting firms and their employees—that will demand greater output of whatever good or service they sell to the government (not unlike bureaucrats). . . . [It is inappropriate to assume] that contracting for services will necessarily reduce the size of the resource pool controlled by government, particularly the number of persons dependent on public funds.

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> Furthermore, because consumers who directly benefit from the services do not pay a unit price, the excess demand will lead to crowding or congestion and alternative allocation techniques will have to be established. The misallocation of resources due to interest group demands and nonprice rationing could be far more significant than misallocation due to bureaucractic production inefficiencies. Thus, the major shortcoming of contracting out is that it can only overcome a few of the problems that arise from government failure. . . . Of course, gains in production efficiency are better than no gains at all.

Since writing this, however, I have had third thoughts about contracting out (Benson, forthcoming). In particular, "gains in production efficiency" are not desirable if what is being produced is not desirable.

Many normative criteria can be applied when answering the question, Should government services be contracted out? "Efficiency" is presumably the norm applied by strong advocates of contracting out, but there is more than one dimension to the concept of efficiency. In particular, while contracting may lead to gains in "technological efficiency" (a higher "quality" of some defined set of services can be produced at a lower cost), it may not lead to improvements in "allocative efficiency" (it may be less likely that scarce resources are allocated to their highest and best use, because resources should not be allocated to the defined set of services). Furthermore, when another normative criterion, liberty, is applied, the potential technological efficiency benefits of contracting out may not be worth the costs. This point is illustrated below with an examination of contracting out for prison services.

The benefits of contracting out for government services in general and prison services in particular have been clearly and forcefully enumerated (see, for example, Logan, 1990). For the most part, these benefits take the form of improvements in technological efficiency: Under the right circumstances, the costs of providing the service will be lower and the quality of the services will be superior when they are produced by a private firm rather than by a public bureau. These benefits arise in large part because the incentives and constraints facing public bureaucrats are very different from those facing private producers. Bureau managers face strong incentives to strive for expanded budgets and power, with relatively little concern for efficiently providing quality services (Niskanen, 1971; Benson, 1990, pp. 87–104 and 127–58).

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Private firms may have similar incentives. Their managers too want to expand and prosper, so they seek economic power; but when comparing a market situation with government production, there are very important differences. In particular, private entrepreneurs' desires for expanding power through the market are constrained by two factors: First, they must compete for the attention of consumers with other firms offering similar goods or services, and second, they must produce something consumers will *voluntarily choose* to buy, at a price that consumers are *willing* to pay. If the public contracting process is appropriately structured, the cost-reducing and quality-enhancing incentives associated with the first point can be instilled. Indeed, when the incentives and competitive pressures of the market system are harnessed through contracting out, as they clearly can be (Logan, 1990; Benson, 1990, pp. 184–92), and bureaucratic inefficiencies are avoided, the benefits in the form of cost savings and quality enhancement can be significant (Logan, 1990). However, the second source of incentives in private markets is much less likely to be implemented in the context of contracting for government services.

Private firms in free markets must persuade consumers to buy their products. Individual consumers are the source of demand, and they are free to choose where to spend their money. If government provides services, whether through direct bureaucratic production or through contracting out, individual "buyers" (taxpayers and/or voters) have virtually no influence as to what they buy. Indeed, government can *coerce* them into buying something they may not want. The demands that concern political decision makers are those of powerful organized interest groups rather than those of unorganized individual voters and taxpayers (Benson, 1990, pp. 87–126). Thus resources are allocated to generate benefits for members of powerful political groups, even though the aggregate benefits may be smaller than the costs dispersed among general taxpayers. Furthermore, because the consumers of most government services do not pay a unit price (or at least a price that reflects the full opportunity cost of the resources), the resulting excess demand leads to crowding or congestion whether the product is provided by private firms or public bureaus (Benson, 1990, pp. 131–44). As noted above, "[t]he misallocation of resources due to interest group demands and non-price rationing could be far more significant than misallocation due to bureaucratic production inefficiencies" (Benson, 1990, p. 196), and this could easily mean that the "gains in production efficiency" are *not* better than no gains at all—they may actually be worse. Indeed, in the political arena, improve-

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ments in technological efficiency through contracting out could even lead to a reduction in allocative efficiency and in individual liberty. To see why, contracting out for prison services must be considered in context of the politics of crime and punishment rather than as simply a technological issue.

I. THE POLITICS OF CRIME AND PUNISHMENT

Private firms under contract to the government produce what interest groups want, not what individual consumer–buyers (taxpayers) want. This is as much the case in the area of criminal law and its enforcement as it is in any other area of government (Benson, 1990, pp. 87–126). As Quinney (1970, pp. 15–18) states, "criminal definitions describe behaviors that conflict with the interests of the segments of society that have the power to shape public policy," and "since interests cannot be effectively protected by merely formulating criminal law, enforcement and administration of the law are required. The interests of the powerful, therefore, operate in applying criminal definitions." Similarly, Chambliss and Seidman (1971, p. 67) observe:

> Deviancy is not a moral issue, it is a political question. No act, nor any set of acts, can be defined as inherently "beyond the pale" of community tolerance. Rather, there are in effect an infinite number and variety of acts occurring in any society which may or may not be defined and treated as criminal. Which acts are so designated depends on the interest of the persons with sufficient political power and influence to manage to have their views prevail. Once it has been established that certain acts are to be designated as deviant, then how the laws are implemented will likewise reflect the political power of the various affected groups.

Neely's (1982, p. 29) view is not quite so all-encompassing, as he points out that Anglo-American common law has always made a distinction between customary-law crimes such as murder, robbery, and rape (on this see also Benson, 1990, pp. 11–83) and positive-law crimes, which "have become crimes exclusively because some group lost a political battle." Nonetheless, developments in criminal law are just as political today as they were when the breaking of basic customary law was declared a crime against the king, so the king could collect fines and confiscate property, rather than a tort with restitution owed to the victim (Benson, 1990, pp.

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43–83). Today the objectives of criminalization are somewhat less clear because of multiple demands of special interest groups, but "criminal law is in every regard political" (Neely, 1982, p. 162).[1] Consider, for example, the study by Berk et al. (1977) of changes in the California Penal Code. They found that during the 1950s the making of criminal law in California could be characterized as an "agreed-bill" process involving only a few major criminal justice lobbies, generally the California Peace Officers Association or CPOA (made up of district attorneys, sheriffs, and police chiefs), the American Civil Liberties Union, and the State Bar of California. The agreed-bill process is one wherein lobbyists and a few members of relevant legislative committees negotiate directly in making important decisions (p. 11; also see Heinz et al., 1969). The important part of the legislative process takes place behind closed doors, and most open legislative debate is simply rhetoric for public consumption. Thus legislators do not initiate or shape criminal law policy; they simply react to the demands of lobbies (Berk et al., 1977, pp. 85–86).

During the 1960s criminal law in California began to involve a wider range of groups than were active in the 1950s, but the process did not change (p. 86). The most active groups continued to be the ACLU (and its frequent ally, the Friends Committee on Legislation or FCL), the CPOA, and the Bar Association; but small vocal groups of citizens also appeared to initiate attempts to alter the Penal Code. Often they allied themselves with the law enforcement interests or the ACLU. Several established interest groups whose original purpose was not directed at criminal justice also often supported an established criminal justice lobby. For example, the ACLU often enjoyed support from the state NAACP, the Mexican–American Political Association, the Northern and Southern California Council of Churches, the Association of California Consumers, and the Federation of the Poor (p. 62).

Berk et al. went beyond other studies of interest groups' impact on changes in criminal codes to provide statistical support for the contention that this influence is extremely important. They looked at the influence of the law enforcement lobby (LEL), primarily the CPOA, and the civil liberties lobby (CLL), primarily the ACLU and FCL, recognizing that these principal groups often worked with others. "Effective influence"

[1] For a review of additional literature drawing similar conclusions, see Benson, 1990, pp. 87–126.

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was identified in a number of ways. Using newsletters and journals published by the interest groups and information from journalists, politicians, and criminal justice professionals, the researchers made independent evaluations of how effective lobbyists were in shaping the Penal Code. They found that year by year, the LEL achieved significant changes leading to more resources and powers for police; but more significantly, in regard to the issue of contracting for prison services, LEL demands also led to increasing criminalization (thereby expanding the scope and power of the law enforcement bureaucracies), and to more severe penalties.[2] That is, the LEL's demands tended to increase the demand for prison space. They also had a significantly negative impact on the rights for defendants, judicial discretion, and, to a lesser degree, the rights and resources going to corrections officials. The CLL's efforts were positively correlated with substantial gains in defendants' and corrections officials' rights and in judicial discretion; they had a negative impact on criminalization, penalty severity, and police powers. The two groups were not in direct and constant opposition in all instances, however, and their agendas and impacts were somewhat different. The LEL apparently emphasized criminalization and penalties, while the CLL was more interested in limiting police powers and expanding judicial discretion (pp. 201–03).

The Berk et al. study also found that "public opinion" played no identifiable role in Penal Code revision. Moreover, legislators did not develop and seek support for their own criminal justice agendas; they simply responded to the interest groups concerned with such legislation. They concluded that criminal law was unquestionably enacted for the benefit of interest groups rather than for the "public good."

Because the costs of forming an interest group can be high, strong incentives (high expected per-capita gains or high anticipated losses in the absence of organizing to resist another group's efforts) are probably required to induce individuals to organize. The benefits accruing to a

[2] Police are traditionally very active in the political arena, acting as lobbyists and frequently employing tactics common to labor unions, such as strikes, demonstrations, and protests. Police strikes are often illegal, but "blue flu" has a long history and is increasingly giving way to outright strikes. In addition, as Glaser (1978, p. 22) observed, "the leaders of a law enforcement bureaucracy have special advantages for promulgating their views because of their ready access to the heads of the executive and legislative branches of government, their ability to issue official reports and call news conferences, and their consequent control over public information on the effectiveness of the law and need for it."

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particular group from passage of a law that provided the initial incentive to organize are probably very large, but the *additional* cost of demanding further statutory changes may be very small. In other words, the "price" paid for additional laws is effectively zero, and laws are supplied to active interest groups because they press their demands. Furthermore, the laws that are supplied need not generate sufficient benefits to even cover the cost of their enforcement, since those demanding laws do not have to pay for enforcement (Benson, 1990, pp. 115–22).

Under this institutional arrangement, enforcement requirements arising from the quantity of laws demanded and instituted through legislation should exceed the limited supply of enforcement resources (pp. 131–44). The legislature and the courts can pass laws at fairly low cost, of course, so the result of excess legislation is really reflected in the allocation of enforcement resources. Laws that generate relatively low value when enforced will compete for the attention of law enforcers with laws that can generate relatively greater value. Allocation of enforcement resources according to willingness to pay would mean that the laws producing the greatest benefit would typically be enforced, but law enforcement resources are not allocated on this basis. Instead, interest groups also have a great deal of say in the rationing of law enforcement resources (pp. 112–15). One possible result, given non-price means of allocating prison space, is that some criminals who pose relatively serious threats to citizens when they are released (for example, potentially violent criminals) will be released early in order to accommodate incoming criminals who pose relatively little threat to citizens or their property (for example, marijuana users) (Benson and Wollan, 1989). There is an increasing trend to define more and more activities as crimes and to lengthen prison sentences for some crimes, in reflection of the strong lobbying efforts of law enforcement bureaucrats, thereby adding to the problem. For example, Cole (1973, pp. 23–24) reported that an important "factor in the crisis of criminal justice is the 'law explosion'—the increasingly complex and demanding pressures placed on law and legal institutions. . . . [This reflects] the tendency to utilize the criminal law to perform a number of functions for society outside the traditional concerns for the protection of persons and property." These "functions" are typically associated with enforcement of so-called "victimless" crimes, but they appear to be putting ever-increasing pressure on the resources of the criminal justice system, including prisons. A victimless crime is defined as one in which there is no readily identifiable party who has been directly injured. Thus, the

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"plaintiff" must be the state or a governmental agency, since no individual has strong incentives to pursue prosecution. Almost without exception, victimless crimes involve prohibitions of voluntary exchange relations. They include drug use, gambling, and prostitution, all of which are marketed by entrepreneurs and voluntarily purchased by consumers.

The most significant increases in "criminalization" and in law enforcement effort throughout this century have been with regard to such victimless crimes. We can look to the experiment with liquor prohibition in the 1920s, the prohibition of various narcotics beginning with the Harrison Act of 1914, and the prohibition of marijuana after the Marijuana Tax Act in the 1937 for dramatic examples, but state and federal governments have also increased the severity of punishment mandated for drug crimes since their initial illegality while allocating larger and larger amounts of law enforcement resources to the control of such activities. Two "Drug Wars" have been declared since the mid-1960s, for example. The first occurred between 1965 and 1970. Prior to this period, police resources in the United States were allocated so that one drug arrest was being made for every twenty Index I arrests (Index I crimes are reported crimes against persons and property, including murder, manslaughter, sex crimes, assault, robbery, burglary, larceny, and auto theft). During the 1965–70 War on Drugs, arrests for drug crimes rose more than five fold. In fact, criminal justice system resources were reallocated so that one drug arrest was being made for every four Index I arrests. Drug enforcement relative to effort against Index I offenses remained relatively constant from 1970 to around 1983, but then a new War on Drugs was declared. By 1989, criminal justice resources were being allocated to make only 2.2 Index I arrests for each drug arrest. The result is that the most dramatic changes in criminal law emphasis in the last decade have clearly been in the area of illicit drug enforcement.

The War on Drugs has been a primary factor in producing record increases in prison populations and budgets which have in turn forced local, state, and federal administrators to consider contracting with private firms (Krajick, 1984b, pp. 20–21), in order to continue meeting the political demands for increased uses of imprisonment. According to the recent court rulings, 60 to 80 percent of the nation's jails and prisons are "overcrowded" (Poole, 1983, p. 4). As prison costs rise, taxpayer dissatisfaction with the correctional system is mounting. They see prisons as ineffective and costly, with high rates of recidivism and repeat offenders, and the critics are calling for reform and innovation. The potential for an

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organized taxpayer "revolt" in this regard may not be imminent, but if trends continue it may become a distinct possibility. Furthermore and perhaps more significantly, other groups (for example, groups seeking increased funding for education) are beginning to see prisons as a major competitor for a large share of state and local budgets.

Politicians and existing interest groups, recognizing this threat, have reacted by looking for some sort of technological innovation in corrections (alternatives to imprisonment, boot camp programs, sentencing guidelines, determinant sentencing, and the like). But as Peter Greenwood concluded in his study of the correctional system (quoted in Poole, 1983, p. 2), "when you're looking for innovators you don't look to government; you look to business." Thus, contracting out is also seen as a potential source of innovation. When contracts are narrowly focused on imprisonment, however, then so is the resulting innovation. If private firms are successful at lowering costs, and perhaps making prisons relatively more effective, then the use of prisons for purposes beyond the control and punishment of property and violent criminals may become *more* acceptable to voters and taxpayers, and the incentives (and therefore the potential) for innovations in the alternative forms of treatment or punishment will be reduced (see Benson and Wollan, 1989, in this regard). Furthermore, the incentives to consider fundamental changes in criminal law are reduced. Those who benefit from existing laws (and in fact, from increasingly harsh prison sentences and expansion of the scope of criminal law) are less likely to be opposed by those who must pay for the system, if costs are lowered and/or the system becomes technologically more efficient (that is, less bothersome). Let us consider the implications of contracting out for prison services in greater detail in the context of the recent changes in emphasis in criminal law enforcement with regard to the control of illicit drug markets.

II. THE POLITICS OF DRUG ENFORCEMENT AND PRISON CROWDING: IS CONTRACTING THE APPROPRIATE SOLUTION?

Some advocates of contracting out for prisons suggest that such privatization could reduce prison crowding by lowering costs, thereby increasing the supply of prisons. However, prison crowding reflects both supply and demand forces (Benson and Wollan, 1989). Non-price rationing always produces excess demand, of course, so crowding is a possibility even with

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large increases in supply, particularly if demand grows over time as well. As suggested above, one important source of the increased demand for prison space which has substantially increased crowding in recent years has been the growing emphasis on drug enforcement.

Federal, state, and local criminal justice officials joined forces to declare a War on Drugs in 1984 (an explanation of the underlying political and bureaucratic incentives that led to this drug war is provided below). As a result, more and more of the nations' law enforcement resources have been allocated to drug control for several years now, as noted above. To get a clearer picture of the consequences, however, let us consider what has been happening in Florida as a case study. In 1980, 7.4 percent of all arrests in Florida were for drug offenses, while 31.8 percent were for Index I crimes (murder, forcible rape, aggravated assault, robbery, burglary, larceny and motor vehicle theft). The remaining 60.8 percent of arrests were for non-drug Index II crimes. Index II offenses include a variety of crimes, such as simple assault, arson, narcotics, vandalism, vice, fraud, and major traffic violations. In fact, almost 60 percent of Florida's Index II crimes are simply categorized as "miscellaneous." Index I property-crime arrests (burglary, robbery, larceny, and auto theft) made up 26.5 percent of total arrests in 1980. The War on Drugs appears to have really accelerated around 1984 (Benson, Rasmussen, and Sollars, forthcoming) when drug arrests increased to 7.6 percent of the total. (In fact, drug arrests as a portion of total arrests actually fell to 6.9 percent in 1982 and 7.1 percent in 1983.) By 1989, drug arrests accounted for 12.5 percent of total arrests while Index I arrests had fallen to 28.7 percent and Index I property crimes made up only 23 percent of the total. Put another way, police resources were allocated so that 0.28 drug arrests were made for each property arrest in 1980, but by 1989 0.54 drug arrests were being made for each property arrest. Certainly, police resources have been substantially increased over this period as Florida's population has grown, but these arrest figures indicate that they have also been reallocated in order to focus increasingly on drug crimes. Drug arrests increased 167 percent (from 32,029 in 1980 to 85,525 in 1989), while property arrests increased by only 36.7 percent (from 115,240 to 157,512) and Index I arrests as a whole increased by just 41.4 (138,548 to 195,888).

As a direct consequence of the increase in drug arrests and convictions, the demand for scarce prison space has been growing dramatically. Florida's prison population rose from 19,681 at the end of the 1980–81 fiscal year to 38,059 as of June 30, 1989. However, this increase does not

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reflect the full increase in demand for prison space; rather, it reflects the increase in supply. New admissions have gone up substantially faster than new spaces have been built. This has forced a more rapid turnover of inmates. Indeed, an early release program has been implemented to deal with the problem of rationing scarce prison space. Advocates of contracting out might point to this situation and suggest that crowding could be alleviated by reducing costs and therefore increasing the supply of prison space. Indeed, the 1993 Florida legislature began considering the possibility of contracting for prisons, and it is likely to be on the agenda in 1994. However, we should also consider the source of the increase in demand that has produced the crowding.

A substantial portion of the increased pressure on the prison system traces directly to the War on Drugs. For example, there were 1,620 prison admissions for drug offenses during the 1983–84 fiscal year (FY), accounting for 12.9 percent of total admissions. By FY 1986–87 this figure had risen to 22.9 percent of total admissions (5,274). This compares to 15,802 drug admissions for FY 1989–90, or 36.4 percent of total admissions (Florida Department of Corrections, various years). Thus prison admission for durgs rose by 875.4 percent between FY 1983–84 and FY 1989–90, while non-drug admissions rose by only 158.2 percent (from 10,896 to 27,585). And since prison capacity was increased by less than even the increase in non-drug admissions during this period (capacity apparently increased by about 95 percent between 1981 and 1989), the ability of the prison system to perform its functions of punishment, incapacitation, and rehabilitation of criminals, as well as deterrence of potential criminals, has diminished markedly (Benson and Wollan, 1989). For instance, the historic norm prior to the 1980s War on Drugs was that prisoners served 50 percent or more of their sentences on average. Indeed, this continued to hold during the early years of the drug war: for example, inmates released during January of 1987 had served an average of 52.8 percent of their sentences. However, as drug admissions continued to increase at an increasing rate, the prison crowding problem became acute. By January 1988, the average portion of sentences served in Florida had fallen to 40.6 percent, and it reached 33 percent in December 1989. In fact, about 37 percent of the prisoners released in December 1989 had served less than 25 percent of their sentence, and some served less than 15 percent. The Florida legislature was forced to hold a special session in 1993 in order to allocate more funds to prison construction and avoid the "gridlock" that was anticipated late in 1993 when no criminals eligible for early release would

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remain in the system (many prisoners cannot be released early under statutes regarding habitual offenders and various specific crimes).

Given that drug enforcement policy is a major determinant of recent trends in prison crowding, does it follow that crowding should be alleviated by increasing supply (e.g., through contracting out) or would it be more appropriate to reduce demand by reducing the flow of drug criminals into prison? To answer this, the politics of drug crime must be considered.

The Politics of Drug Crime

The criminality of drug use is a relatively recent phenomenon, and numerous self-interest political motivations for original drug criminalization legislation have been identified. Some studies (for example, Thornton, 1991) have noted the incentives of professional organizations such as the American Pharmaceutical Association to create legal limits on the distribution of drugs (there was significant competition between pharmacists and physicians for the legal right to dispense drugs). Others have focused on the strong racial impacts of illicit drug laws and the desire by some groups to control racial minorities through the enforcement of such laws (Helmer, 1975; Musto, 1973, 1987), while still others have noted that the policing bureaucracies have been a major source of demand for the initial criminalization legislation (Himmelstein, 1983; Becker, 1963; Dickson, 1968; Lindesmith, 1965; Hill, 1971). The Marijuana Tax Act of 1937, for example, was passed because of pressure from the Narcotics Bureau of the Treasury Department (Becker, 1963; Dickson, 1968; Lindesmith, 1965; Hill, 1971). In fact, as Thornton (1991) indicates, all of these various self-interests combined to produce the laws against drug use. But even if this were not the case, the "information" (much of which is inaccurate and/or unsubstantiated (Michaels, 1987, pp. 311–24)) used to justify today's "War on Drugs," including the increasingly long prison sentences for various drug offenses, has been supplied primarily by politicians and the police, and a major source of prison crowding in recent years has been the War on Drugs. Through contracting out, these drug criminals could be imprisoned more efficiently and crowded conditions might be alleviated as supply increases with a cost reduction (assuming that the new supply does not create its own demand—an assumption that is clearly questionable (Benson and Wollan, 1989)). In terms of allocative efficiency, though, would reducing the cost of prisons in order to accommodate more drug criminals for longer periods of time be desirable? One must con-

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sider the costs and benefits of illicit drug enforcement to answer such a question.

Primarily as a result of information promulgated by police (Barnett, 1984, p. 53), it is now widely believed that drug crime is the root cause of much of what is wrong with society.[3] That is, even though drug use is a victimless crime, it is claimed that large negative spillovers arise as a direct consequence of drug market activity. In particular, drug use is said to be a primary cause of non-drug crime because, it is contended, property crime is a major source of income for drug users. This has translated into political demands for the criminal justice system to do something about the drug/crime problem (demands that largely emanate from the police lobbies), and in turn, it has lead to an increasing emphasis on control of illicit drug traffic as a means of general crime prevention. Such a reallocation of resources would appear to be justified if drugs truly are the root cause of most other crime. Indeed, if this were true, a crime control policy that focuses on drugs should be a positive-sum game in the sense that increasing drug arrests (and imprisonment of drug users) would reduce both drug crime and non-drug crime. Thus, more efficiently providing prisons and increasing their supply through contracting out might be justified. But as a larger share of law enforcement resources have been allocated to the drug war, it has become increasingly apparent that the other ills of society are not being solved. In particular, efforts at controlling the drug market are not producing the anticipated reductions in other types of crime. Again consider what has happened in Florida.

Index I crimes in general and property crime in particular have been rising in Florida throughout most of the period of an accelerating War on Drugs. Index I crime rates were falling in Florida in the early 1980s (from 8,387.8 crimes reported per 100,000 population in 1980 to 6,837.9 in 1983) but they have risen steadily since 1983, reaching 8,755.9 in 1989. Thus, from 1983 (the year before the War on Drugs began to take off)

[3] Former Director of the Office of National Drug Control or "drug czar" William Bennett, for example, claimed in detailing the effects of drugs and drug use that "we can cite violent crime, the broken home, the bad schools that are closely associated with—and often mistaken for—the country's drug problem; we can speak of poverty, of disease, of racism" (Office of National Drug Control Strategy, 1990, p. 2). Note in this regard that police bureaucrats obtain significant benefits from the War on Drugs, including increased general revenue budgets and discretionary funds from drug-related confiscations (Benson, Rasmussen, and Sollars, forthcoming).

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to 1989, the Index I crime rate in Florida has risen by 28 percent. The property crime that drug users allegedly commit to support their habits has also been increasing: Robbery rates are up by 50.1 percent, larceny is up by 20.1 percent, and burglary is up by 24.7 percent.[4] It appears that either the drugs-cause-crime argument is wrong or that the level of drug use is rising even in the face of the War on Drugs.[5] Evidence from the 1988 *National Household Survey on Drug Abuse* indicates that drug use among a large segment of the population has actually been on the decline since before the War on Drugs started. The use of both marijuana (including hashish) and cocaine by the groups sampled in this survey was rising through much of the 1970s, but use of both began to decline in the 1979–82 period. Some might suggest that this is a reflection of the War on Drugs, but this is questionable since the reversal occurred before

[4] Auto theft is up even more. However, a substantial portion of auto thefts apparently involve "joy rides" and then abandonment, so they are clearly not perpetrated in order to generate income for drug purchases.

[5] There is another possibility as well, which has actually received a great deal of attention in the literature on heroin. The market demand for drugs is typically assumed to have a very low price elasticity because drug addicts with highly inelastic individual demand dominate the market (Eatherly, 1974; Holahan, 1973; Koch and Grupp, 1971; Erickson, 1969). As long as there is some elasticity to the demand curve, supply-side efforts which raise the risk to suppliers and therefore raise the price, reduce the size of the drug market. But when demand is inelastic, expenditures rise as price rises, and it is often assumed that the only option would be to commit more predatory crimes (Erickson, 1969; Koch and Grupp, 1971; Clague, 1973; Holahan, 1973; Eatherly 1974; White and Luksetich, 1983). Even if this scenario is correct (and there is some weak empirical support for it (Brown and Silverman, 1974; Silverman and Spruill, 1977)), it does not appear to explain the aggregate changes in Florida property crime rates. The fact is that despite increased law enforcement effort against drugs, the price of the most important drug in Florida appears to have fallen dramatically over the last few years. Estimates indicate that the wholesale price of cocaine in Miami fell within a range of $28,000 to $37,000 per kiloram in 1985, but the range was down to $12,000 to $15,000 by 1987 (*Narcotics Control Digest*, April 12, 1989, pp. 5–6). This general trend has apparently continued. Florida Department of Law Enforcement estimates are that wholesale cocaine prices have fallen by 69.4 percent between 1987 and 1989, from $32,000 to $9,800 per pound (FDLE internal memo). Falling wholesale prices does not prove that retail prices are falling, of course, but when this trend is added to the fact that demand for drugs also appears to be declining, as indicated below (see the 1988 *National Household Survey on Drug Abuse*), the implication seems to be that falling retail prices are likely. Beyond that, a substantial portion of the drug arrests in Florida are for possession rather than for sale, distribution, or production (Trager and Clark, 1989), which implies that Florida law enforcement is not exclusively focused on a supply-side policy.

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the drug war really began to accelerate. And more significantly, the same trends in use also hold for legal drugs (alcohol and tobacco), implying that education about the effects of drug use may be the primary source of such changes. It is therefore appropriate to question the drugs-cause–crime argument and to ask if scarce resources should be allocated to imprisonment of drug offenders, regardless of whether the resources are used by a government bureau or a private firm under contract.

Clearly, many people arrested and convicted for non-drug crimes are drug users. During the second quarter of 1989, for instance, approximately 84 percent of the male arrestees and 88 percent of the female arrestees in U.S. metropolitan cities tested positive for one or more drugs (O'Neil and Wish, 1989). Similarly, in a 1989 Bureau of Justice survey of 12,000 prison inmates, over 75 percent admitted that they had used drugs, 56 percent acknowledged using drugs in the month prior to their incarceration, and one-third claimed to be under the influence of drugs at the time of their offense. Clearly, it appears that some of the same factors which influence the propensity to commit non-drug crimes also influence the propensity to use drugs, but these facts do not imply a causal connection running from drugs to crime.[6] In particular, the fact that many criminals use drugs does not prove that most drug users commit non-drug crime.

[6] There is a large literature addressing the issue of a drug–crime causal connection (see Wilson and Herrnstein, 1985, chapter 14, and Gottfredson and Hirschi, 1990, for overviews). The drugs-cause-crime argument is based on the contention that drugs affect the mental and emotional states of users, making them aggressive or impulsive; the academic literature, however, does not support this simple causal argument. Another view in the literature, consistent with the arguments presented here, is that some of the same factors which influence the decision to commit crimes also influence the decision to consume illicit drugs. In other words, drug use and criminal activity are simply coincident symptoms of other problems such as the lack of economic opportunity. Yet another characterization of the drug–crime relationship is that it is the illegality of drugs that produces the correlation between drug use and non-drug crime. Kaplan (1983), for example, concludes that because drugs are illegal, (1) the price of drugs is forced up, requiring users to acquire greater resources (this argument is discussed in more detail in footnote 3 earlier), (2) steady employment is difficult because of the time and effort required to find a safe source of supply, (3) holding any job becomes difficult because of arrests and general harassment by police, and (4) drug users are forced into the criminal subculture by being forced to deal with criminals. These kinds of arguments are all predicated on on the assumption that drug use and crime are highly correlated, of course. Evidence discussed below indicates that this may not be the case.

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Several recent studies cast considerable doubt on the drugs-cause-crime argument itself, particularly with reference to property crimes. First, note that this argument generally involves an explicit statement to the effect that *drug addicts* are driven to commit crimes in order to finance their habits. But not all drug users are addicts. Longitudinal analysis of drug involvement suggest that cocaine and heroin users are more likely to cease consumption than alcohol users, and much more likely than tobacco users. Furthermore, many drug users report only occasional consumption. Among persons reporting cocaine use in the last year, for example, almost 80 percent said they used the drug once a month or less. An alternative measure of the frequency of addiction is to compare the lifetime "prevalence rate" (the portion of the surveyed population reporting that they had consumed a drug sometime during their lifetime) for drug use to the prevalence rate for the last month. Since addiction requires current consumption, the ratio of the last-month and lifetime prevalence rates provides an index of how many individuals have been able to use drugs without becoming addicted (or have been successfully treated for addiction). Data from the 1988 *National Household Survey of Drug Abuse* provides such ratios. For cocaine they vary from 0.324 for the 12–17 age group to 0.228 for the 18–25 age group and 0.091 for the over-25 group. Thus, even if the drugs-cause-crime argument is true for addicts, it does not follow that an indiscriminate war on drug use by addicts and non-addicts alike is an appropriate crime control policy, let along a policy that should be made more efficient by contracting our prison service to support it. But it also appears that property crime is not the sole source of income for drug users, including drug addicts.

Heavy drug users can have several sources of income other than property crime. In fact, users apparently earn almost as much income through non–victim Index II crimes such as drug sales, prostitution, and pimping as they do through Index I property crimes (Kaplan, 1983, p. 54; Reuter et al., 1990). Indeed, Gould, et al. (1974) suggest that half or more of the money spent on heroin in the early 1970s was probably generated through the sale of the drug. Furthermore, drug users also often have legitimate sources of income (Kaplan, 1983) such as wages, welfare payments, and money from parents. Reuter et al. (1990) conducted a study of drug sellers in Washington, D.C. They found that drug sellers were also drug users, but that these sellers generated income both by selling drugs and by holding legitimate jobs. The majority of drug sellers held jobs that earned, on average, about twice the minimum wage. These facts

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are important because they illustrate that estimates of the level of property crime committed by drug users can be highly misleading (see Michaels, 1987; Kaplan, 1983). As Kaplan (1983) explained, these estimates often involve an assumption that all drugs are purchased with income obtained through property crime, so the estimated amount of drugs consumed is multiplied times the estimated price of drugs to determine the predicted value of the property stolen to finance drug purchases. Through such a procedure, it was estimated that addicts supposedly stole ten times as much as was reported to police in all property thefts in New York City (p. 52). Certainly, under-reporting of crimes by victims cannot explain such a large discrepancy. Indeed, if the estimate of expenditures on drugs is anywhere close to being accurate, it would suggest that at most only about 20 percent of those expenditures could be generated through property crime, since victims apparently fail to report about half the property crimes they suffer (see Research and Forecasts, Inc., 1983), and this still assumes that all property crimes are committed by drug users.[7] In other words, perhaps 80 percent (or more) of the drug-using population is not involved in property crime. This suggestion is little more than a tenuous conjecture at this point, but there are several other findings that support this conclusion.

Trager and Clark (1989) examined the arrest history of persons in Florida having at least one misdemeanor or felony drug arrest during 1987. Of the 45,906 people arrested for possession, over 80 percent had never been arrested for burglary and over 90 percent had never been arrested for other property crimes. Of those arrested for sales, only slightly more than 25 percent had prior burglary arrests, and again over 90 percent had no previous arrest for other property crimes. Of course, if police are emphasizing drug crime to the virtual exclusion of property crime, such arrest statistics may be quite misleading. Nonetheless, these data suggest first, that a substantial portion of drug offenders do not appear to be committing property crimes (or violent crimes—see Trager and Clark, 1989), and second, that many criminals who commit Index I crimes also use drugs.

This two-tiered characterization of the drug population is reinforced by a recent recidivism study (Kim et al., 1993). The study identified 4,394 persons who had been imprisoned for a drug offense in Florida after 1985

[7] Actual estimates of the portion of property crimes committed by addicts range from about 25 percent to over two-thirds (Erickson, 1969, p. 485; Wilson et al., 1972, p. 12; Eatherly, 1974, p. 212), although these estimates are dated.

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and released prior to April 2, 1990. By April 2, 1990, 49.6 percent (2,180) of these 4,394 had returned to the custody of the Florida Department of Corrections via probation or reincarceration. About 69 percent (1,504) of the returnees were convicted of another drug offense, while only about 31 percent were convicted of a non-drug offense (theft, burglary, and robbery accounted for about 20 percent of the 2,180 returnees). Again, it appears that the majority of drug users may not be involved in non-drug crime, although such a conclusion is not necessarily warranted if the criminal justice system is overlooking non-drug crime in order to obtain more drug convictions. In this regard, however, Kim et al. found that the tendency to recidivate was significantly lower for those individuals who only had convictions for drug offenses than for those who had convictions for both drug and non-drug crimes. This reinforces the perception that there are two distinguishable groups of drug offenders: those who also commit Index I crimes and those who do not.

Kim et al. also found that drug offenders respond to many incentives created by the law enforcement sector: Both increased policing efforts and imprisonment rather than probation appear to deter unlawful behavior for drug criminals. This implies that drugs do not dominate individuals to the degree that the drugs-cause-crime argument often claims.[8] Of course, the fact that drug activity can be deterred by criminal justice resources does not demonstrate that it should be. After all, the likelihood of drug consumption apparently can also be reduced through education and treatment programs, and criminal justice resources also have alternative uses (the control of property and violent crimes, for example). Indeed, one finding by Kim et al. bears directly on prison crowding. They found that the length of time served in prison did not affect the probability of recidivating. The War on Drugs has involved increasingly long sentences for drug offenders, thereby adding to the prison crowding problem (which contracting out is expected to alleviate), but these longer sentences apparently do not significantly affect future behavior of drug offenders. Thus even assuming that deterrence of drug use is an appropriate function of the criminal justice system, prison crowding could

[8] Fernandez (1969, p. 487), for example, contends that direct efforts against predatory crimes are likely to be ineffective because "for heroin users, jail sentences cease to be a deterrent." (See also Blair and Vogel, 1973). This claim appears to be incorrect, given the results in Kim et al., 1993.

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be reduced by giving shorter sentences to drug offenders without reducing the deterrent effect of imprisonment itself.

Another piece of evidence on the drug–crime connection comes from the large body of empirical literature supporting the expectation that criminals respond to many stimuli. Becker's (1968) economic theory of crime generated a substantial number of empirical studies designed to explore the relationship between crime rates and the probabilities of arrest and conviction, the severity of punishment, and potential criminals' opportunity costs.[9] This literature suggests that police efforts can deter Index I crimes and that opportunity costs matter in the decision to commit crimes. If this is true then drugs clearly are not the only cause of non–drug crime. Of course, if drugs are a cause of non-drug crime then this large body of research might be flawed; by failing to control for drug use these empirical studies could be misspecified. Benson, Kim, Rasmussen, and Zuehlke (1992) develop a structural model of property crime using data from Florida counties for 1986 and 1987 and controlling for the level of drug activity. My colleagues and I get results quite consistent with the implications suggested by Trager and Clark's (1989) examination of arrest data and Kim et al.'s (1993) study of conviction data, both of which indicate that somewhere around 20 percent of the drug-using population also commit property crimes. Specifically, our estimates imply that a 1 percent increase in drug-market activity is associated with a 0.183 percent increase in property crime. In addition, we also found that controlling for drug-market activities does not change the general implications of the economics of crime literature. Policing still deters property crime and opportunity costs appear to matter, so the fact that other studies did not control for drug activity does not necessarily mean that they are misspecified.

The evidence discussed here all suggests that a substantial portion of the drug-consuming population is not heavily involved in property crime. Of course, none of this evidence proves that drugs do not cause crime for a subset of the drug-consuming population. Yet another related issue deserves attention, however. What happens to the demand for drugs as illegally obtained income rises? In other words, instead of asking, Does drug use lead to crime, we might ask, Does crime lead to drug use? If the expected return to illegal activities rises (because, say, the probability

[9] For reviews of the literature see Cameron, 1988; Brier and Fienberg, 1980; and Rasmussen, Benson, Kim, and Zuehlke, 1990.

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of being arrested falls), then under most circumstances, the illegal activity should increase. The increased income can be spent on goods, including illicit drugs, and if a drug is a normal good the increase in income will produce an increase in demand for the good. Of course, if the drug is an inferior good demand will fall.

There appears to be little attention given to the potential causal relationship running from crime to drug use, a perspective in sharp contrast to the much more frequently claimed causal flow from drug use to crime in order to finance a habit. The recent study of Washington, D.C. drug dealers suggests that there could be an important connection of this type (Reuter et al., 1990). In particular, the Rand Corporation researchers found that when juveniles start dealing drugs they are typically *not* drug users. Thus they are not committing the crime of drug dealing in order to finance a drug habit.[10] However, the longer someone stays in the drug supply business, the more likely he will become a user and ultimately an addict. In fact, most adult dealers in Washington, D.C. apparently are addicts. Other studies of the temporal sequencing of drug abuse and crime also suggest that criminal activities generally precede drug use (Gadossy et al., 1980; Greenberg and Alder, 1974). Indeed, Chein et al. (1964, pp. 64–65) conclude that delinquency is not caused by drug abuse, but rather, that "the varieties of delinquency tend to change to those most functional for drug use; the total amount of delinquency is independent of drug use." It clearly could be the case that once an individual has decided to turn to crime as a source of income, thus moving into the criminal sub-culture, he may discover that drugs are more easily obtained within this sub-culture than they were previously, and perhaps that the risks posed by the criminal justice system are not as great as he had initially anticipated. Furthermore, criminal activity generates the income to buy goods that one previously could not afford, including drugs. In this sense crime can lead to drug use, rather than the reverse. Of course, if the individual then becomes addicted so his preferences are altered, the drugs-cause-crime relationship might come into play.

[10] The explanations for this behavior include the apparent fact that these juveniles perceive drug dealing to be an attractive economic opportunity relative to their legal opportunities. These juveniles tended to underestimate the risks associated with law enforcement activities as well, although they also tended to overestimate the risks of violence and injury.

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Even if drugs were an important determinant of criminal activity for a portion of the drug-consuming population, an indiscriminate war on drugs may not be a positive-sum crime policy. First, as explained earlier, the benefits of imprisoning drug offenders are probably much smaller than is generally claimed in bureaucratic and political rhetoric. Beyond that, there are substantial hidden costs as well. Benson, Kim, Rasmussen, and Zuehlke (1992), Benson and Rasmussen (1991), and Sollars et al. (1994) used different data sets and found that reallocating scarce police resources away from the control of property crime toward the control of drug crime significantly reduces the risks that property criminals face. This reduction in deterrence leads to a significant increase in property crime. Indeed, in sharp contrast to the political rhetoric, it seems that *drug enforcement causes property crime*. A 1 percent increase in drug arrests as a portion of total arrest leads to an estimated 0.199 percent reduction in the probability of arrest for property crimes. Furthermore, a 1 percent reduction in the probability of arrest for property crimes leads to an estimated 0.826 percent increase in property crimes. Therefore, as resources are reallocated to control drug crime, property crime is rising. The reallocation of policing resources to control drug use actually explains a substantial portion of the increase in property crimes that has occurred in Florida since the War on Drugs started. Similarly, Rasmussen, Benson, and Sollars (forthcoming) found that drug-control efforts also cause violent crime. As one policing jurisdiction increases its drug-control effort, drug-market participants have incentives to relocate into jurisdictions with less effort directed at drug markets. This creates conflicts over "turf" and violent confrontations. Furthermore, the early release program that has been instituted to reduce prison crowding in the face of the large increase in drug arrests and convictions and longer drug sentences has further reduced the expected punishment and therefore, perhaps, the deterrent effect for Index I crimes, thus increasing the level of those crimes. The costs of the War on Drugs, including the use of prison space to house drug criminals, appear to be substantially greater than the benefits, implying that the criminal justice resources allocated to this war are being used inefficiently.

Given these high opportunity costs and the general failure of the drug war to solve the problems that politicians and policy makers claimed it would, it is reasonable to ask why the war was actually waged. A "War on Drugs" was declared by President Reagan in October of 1982. Such an offensive has to be waged by local police, however, and these agencies generally did not significantly increase their relative efforts against drugs

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in a dramatic fashion until 1984, when a substantial reallocation of state and local criminal justice system resources towards drug enforcement began. My colleagues and I (Benson, Rasmussen, and Sollars, forthcoming) explain that state and local policing officials faced an exogenous change in bureaucratic incentives in 1984 that induced an increase in drug enforcement efforts. In particular, one section of the Comprehensive Crime Act of 1984 established a system whereby any local police bureau that cooperated with federal drug enforcement authorities in a drug investigation would share in the money and/or property confiscated as part of that investigation. As a result, police in many states whose own laws or constitutions limited confiscation possibilities began to circumvent state laws by arranging for federal authorities to "adopt" their seizures.[11] Then, under the 1984 federal statute, a substantial percentage of these seized properties went back to the agency that made them, even if the state's laws mandated that confiscations go someplace other than to law enforcement. The 1984 federal confiscations legislation followed a period of active advocacy by federal, state, and local law enforcement officials who emphasized that it would foster cooperation between their agencies and increase the overall effort devoted to and the effectiveness of drug control; that is, law enforcement bureaus maintained that they needed to be paid to cooperate, whether or not the cooperation was in the public interest. Benson, Rasmussen, and Sollars (forthcoming) demonstrate that the resulting confiscations provided police bureaucrats with substantial increases in discretionary budgets and created strong incentives for the reallocation of police resources toward the now-lucrative area of drug control. The increase in drug arrests naturally led to the increase in drug convictions with prison sentences that are discussed earlier.

Drug Crime and Prison Crowding

Assuming that control of property crime truly has been a primary motivating force for the War on Drugs (an assumption which is rejected above), then the increasingly apparent failure of the criminal justice system

[11] Many states mandate that confiscated assets be turned over to a general government authority, while others require that some or all seized assets be used for specific purposes, such as drug treatment or education. Various states also limit the kind of assets that can be seized. For instance, in 1984, only seven states allowed seizure of real estate used for illegal drug activities. The federal statute had no such limitation.

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in this regard and the rising costs in the form of prison crowding, early release, and reductions in the effectiveness of imprisonment as a sanction, would seem to imply that individual policing jurisdictions should move rapidly toward a declaration of peace in the War on Drugs. De-emphasizing drugs and other such "crimes" (perhaps even decriminalizing them) and "the consequent reduction of pressure on police, courts, and correctional services would have a massive impact on the criminal justice system" (Goldstein and Goldstein, 1971, p. 293). Clearly, a reduction in the resources allocated to the control of such crimes could simultaneously reduce prison crowding problems and allow some redirection of criminal justice resources toward the conrol of violent and property crimes. For instance, in 1971, the Los Angeles district attorney began filing all marijuana possession cases as misdemeanors rather than as felonies. As a direct result, approximately 10,000 fewer felony cases were filed during the 1971–72 period than during the previous year, cutting the system's felony caseload by 25 percent (Poole, 1978, p. 53).

None of this discussion implies that contracting out itself is undesirable. Rather, it suggests that the use of imprisonment to control drug "crime" appears to be inappropriate. The cost of doing so is obviously very high, while the social benefits are questionable at best. Contracting out for prison services could reduce some of the direct (most obvious) costs, of course, but as reducing the cost might reduce the incentives for taxpayers to demand changes in the laws against drug use and/or to demand increased use of alternatives to imprisonment for the treatment of drug use, then contracting out may actually allow this allocatively inefficient policy to remain intact longer than it otherwise might. Thus, while contracting out might improve technological efficiency, it could actually reduce allocative efficiency. Furthermore, going beyond the efficiency norm, and considering a normative standard of liberty, this use of imprisonment becomes even more undesirable. Drugs certainly may harm individuals who choose to consume them (just as tobacco clearly does) but in the absence of significant spillover effects (such as the lack of a strong causal relationship between drugs and crime, as discussed above), government-imposed limitations on individual choice clearly are not warranted on liberty grounds either. Similar normative issues come into play in another use of prisons involving victimless crimes, and in this case, contracting out has clearly become very important already.

III. USING PRISONS TO CONTROL LABOR SUPPLY

"Houses of correction" were first established in England under Elizabeth

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I to punish and reform able-bodied poor who refused to work (Beattie, 1986, p. 492). A "widespread concern for the habits and behavior of the poor" is often cited as the reason for the Poor Laws regarding vagrancy and the establishment of facilities to "reform" the idle poor by confining them and forcing them to work at hard labor (p. 497). Chambliss (1964, p. 69), however, reported that "there is little question but that these statutes were designed for one express purpose: to force laborers (whether personally free or unfree) to accept employment at a low wage in order to insure the landowner an adequate supply of labor at a price he could afford to pay." Prisons are still being used today to control labor markets for the benefit of special-interest groups. The most obvious example may be the use of prisons to hold illegal aliens who enter the U.S. seeking employment, and contract prisons are playing a major role in this process.

The tremendous poverty in Mexico makes the U.S. labor market very attractive. Unskilled laborers who are lucky enough to have a job in Mexico earn two or three dollars a day. In fact, an estimated 17 percent of the Mexican population earns less than $75 a year. And things are not likely to improve with population growth expected to double Mexico's population within twenty-five years. Similar conditions exist farther to the south in El Salvador, Guatemala, and Columbia, as well as in many Caribbean countries. To the north, on the other hand, an illegal alien in the United States can earn at least $25 a week as a maid, or possibly $1.75 an hour as a stoop laborer in agriculture, or five to six dollars an hour as a construction laborer. Perhaps up to 30 percent of the illegal workers in the United States earn more than the legal minimum wage (Goodman and Dolan, 1985, p. 161), and many work two different jobs, putting in sixteen hours a day in order to send money back to their families in Mexico. Employers are more than happy to give illegal aliens jobs. After all, many of the jobs these laborers are anxious to have are jobs that U.S. citizens generally are not willing to take, and the aliens are usually found to be exceptionally good workers. But this is an illegal market and the Immigration and Naturalization Service (INS) is responsible for policing it. The INS is obviously having an effect. Many aliens now must pay a guide or "coyote" to avoid the INS and smuggle them into the U.S. Smugglers make millions of dollars a year as a result. Furthermore, increasingly large numbers of aliens are arrested, imprisoned, and then deported for the "crime" of seeking employment in the United States. As the INS has stepped up its efforts to slow the flow of aliens and to deport those who have successfully entered the country, the cost to

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American taxpayers has risen. One aspect of this is the increasing need to house captured aliens in secure facilities (prisons) until they can be deported. This requirement is being met in many instances by private firms, in part because the private sector has been able to respond to the rapidly growing demand much more quickly than the INS itself could if it were to build and staff its own prisons (Krajick, 1984a, p. 24). Thus, the ability of the private sector to respond quickly and effectively is actually allowing (encouraging) the INS to step up enforcement efforts. As a result, perhaps the fastest growing aspect of contracting out for prisons is in the area of federal detention facilities for aliens.[12] Is contracting out desirable in this case? Again the answer hinges on an understanding of the politics of the issue.

The Politics of Immigration

Immigration in the United States was not restricted during the country's first century. The first general statute affecting immigration was only passed in 1882. It established a head tax and provided for the exclusion of certain kinds of people. This was followed by the Chinese Exclusion Laws in the first decade of the twentieth century. Large-scale immigration from Europe and Asia, sometimes exceeding a million people a year, continued until the Quota Acts of 1921 and 1924 were passed. The first major flow of immigrants from Mexico occurred between 1910 and 1914, when an estimated four million immigrants arrived over four years. The next fifty years saw cycles in this northward flow, largely determined by labor-market conditions in the United States (Goodman and Dolan, 1985, p. 160). World War II and its resulting labor shortage even saw a formal agreement between the U.S. and Mexico, the Bracero Program, to bring

[12] Several firms are presently running large facilities of this type. Behavioral Systems Southwest, for instance, the first company to operate a major adult detention facility, currently runs minimum-security facilities for 600 to 700 illegal aliens for the INS in San Diego and Pasadena, California, as well as in Arizona. The company also had a contract for a facility in Aurora, Colorado, but the contract ended in 1987 when Wackenhut got a contract to build a new facility there. In 1985, the Federal Bureau of Prisons awarded a contract to Palo Duro Private Detention Services for a 575-bed, minimum-security prison for illegal aliens. Corrections Corporation of America, Inc., formed in 1983, had a 350-bed minimum-security jail in Houston for the INS in operation in 1984. In 1985, the company received a second INS contract for a Loredo, Texas, facility with a daily population of 175. It now incarcerates alien criminals for the Federal Bureau of Prisons as well.

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hundreds of thousands of Mexicans into the country on a temporary basis. This formal agreement ended in 1947 with the return of large numbers of servicemen. However, the number of illegal aliens began to rise substantially, and in the early 1950s the federal government initiated Operation Wetback: Almost 3 million people were rounded up and deported in three years. With the Korean conflict and the strong economy of the 1950s, however, the Bracero Program was reinstated under Eisenhower; it lasted until 1964, when Congress terminated the program. Clearly, the "criminality" of the act of moving from Mexico to the U.S. in order to work is subject to the forces of politics.

Today, with quotas severely limiting legal immigration, illegal immigrants flow into the country by the millions. On the surface, the modern politics of immigration is fairly straightforward: Organized labor lobbies hard to limit immigration while some types of business support easing or elimination of immigration restrictions (racial considerations probably also play a role). Labor interests have dominated, however, in recent years. This may reflect several factors. First, labor unions are well organized and their interests in this regard are homogeneous. Any American workers who actually might be in a position to compete with the immigrants would face lower wages if immigration increases, but the fact is that most American workers are not willing to take the jobs filled by aliens, so there really is almost no direct competition between American citizens and illegal aliens. Indeed, it would be surprising if there were. After all, if an American worker wanted a job held by an illegal alien, he would simply have to report the alien to the INS, and both the employer and the alien would suffer the consequences. Thus, aliens tend to seek jobs that American workers do not want in order to avoid detection, and employers tend to offer jobs to aliens that Americans do not want in order to avoid being reported. Even if this were not the case, the fact is that very few members of organized labor, the major source of political demands for immigration restrictions, would actually be directly affected, because they do not compete directly with the immigrants in the unskilled labor market.

There still is an indirect impact on labor union members, however, in the form of indirect competition. Many products can be produced with different technologies. Availability of a large pool of unskilled labor at low wages creates strong incentives for producers to adopt technologies that use relatively more unskilled labor and relatively less capital requiring the skills that organized labor possesses. Substitution of unskilled labor for capital and skilled labor would reduce demand for skilled labor and

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clearly impact organized labor adversely (Anderson, 1987; Goodman and Dolan, 1985). But note that this substitution would actually enhance allocative efficiency and reduce consumer prices for those goods produced with the lower-cost technology. Thus, the resources used to prevent such a substitution, including the private prisons under contract with the INS, are being used to reduce allocative efficiency.

In contrast to the united front that labor unions provide on the issue of immigration restrictions, those business interests that are affected by immigration restrictions are less well organized, and their interests are less homogeneous. Some labor-intensive businesses that benefit from low-cost unskilled labor have significant location-specific capital and therefore have strong interests in seeing a change in the law. However, other labor-intensive businesses can relocate outside the U.S. in order to gain access to low-wage labor (an issue examined below) at a lower cost than the costs associated with lobbying legal change, particularly given the strong opposition they would face and the uncertainty about achieving a significant easing of immigration restrictions. Furthermore, some businesses that may face high moving costs but who can benefit from employing unskilled labor at low costs are relatively capital intensive, so the gains from employing immigrants are relatively small, and their incentives to invest in a lobbying effort in the face of the low probability of success are relatively weak. Indeed, some businesses that have adopted capital and/or skilled-labor-intensive technologies may side with the labor unions on this issue because they want to limit competitive pressures from other businesses with unskilled-labor-intensive technologies. Thus the heterogeneity of the business interests regarding immigration policy and the resulting lack of a united front explains why organized labor has dominated the politics of immigration in recent years.

Business and unionized labor are not the only interest groups involved in the politics of immigration, of course. Mexican-Americans have also become active recently in the political arena, for example, although there does not appear to be unanimous agreement among this loosely organized group. Many support the granting of amnesty to illegal aliens who have been in the U.S. long enough to establish themselves as part of the community, but many legal immigrants object to giving a general amnesty to illegal aliens who could then more easily compete with them. One more "interest group" deserves mention. State and local governments see higher costs arising from providing schools and other services to immigrants without sufficient increases in state and local taxes to cover those costs.

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Thus, they too advocate federally imposed and enforced restrictions on immigration. In fact, these immigrants would probably pay more in taxes than the costs of the services they require, but the majority of the taxes they would pay would be to the federal government in the form of income and Social Security taxes, while the cost of the services are largely born at the state and local level (Simon, 1984).

The primary beneficiaries of a strictly enforced immigration policy are the members of organized labor who face less indirect competition and therefore receive higher wages, the smugglers who have set up lucrative operations along the border, possibly some local taxpayers who anticipate higher taxes with increased immigrant demands for local government services, and perhaps those groups and individuals whose income comes from enforcing the immigration laws (INS employees and private suppliers of contract prison services, for example). There are several costs associated with limits on immigration, as well. The aliens who are excluded, or who are forced to pay smugglers to get into the country (and perhaps be robbed and/or killed in the process) and then take relatively less desirable jobs at lower pay than they otherwise would in order to avoid detection, obviously bear a large cost. Consumers, who pay higher prices because of the higher wages earned by organized labor, also bear a cost. Some American workers may also be facing adverse consequences as employers locate assembly plants ("maquiladora") in Mexico and elsewhere in order to gain legal access to low cost labor. The impact of such location decisions are clearly non-trivial. Over 400,000 Mexicans were employed in U.S.–owned maquiladora during 1990, generating $3.5 billion in foreign exchange for Mexico (Reibstein, 1991, p. 43). Furthermore, a firm that might willingly employ both American and Mexican labor if its plant were located in the U.S. is much more likely to employ only Mexican workers if it locates the plant in Mexico. Federal taxpayers also bear a large share of the cost—that which is associated with enforcement.

Contracting Out and Immigration Control

The increasing demand for housing captured aliens in prisons until they can be deported is being met by private firms in many instances. Is contracting out desirable in this case? In a narrow sense it may appear to be: Private firms can provide the service more quickly and at a lower cost than can the government itself. But in a larger sense it may not be. As the lower cost of enforcement that arises from contracting allows and

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encourages more intensive enforcement, and tends to reduce the likelihood that there will be support for changes in the immigration laws, contracting may not be desirable, at least from some normative perspectives. This policy appears to reduce allocative efficiency, for instance, as noted above. By limiting the free flow of labor, laborers are not being allocated to their highest and best uses. Furthermore, from a liberty perspective the implications seem clear. Freedom of exchange includes freedom to sell labor services to the highest bidder and buy from the laborers offering the best work at the lowest wage. Thus, this particular use of prison resources, whether provided by private firms or government bureaus, is inappropriate.

Note that illegal migration is largely a victimless crime, as is drug use. The drug supplier and demander, the immigrant and his employer—all enter into a voluntary exchange, and the alleged third-party affects (for example, crime caused by drugs, or the taking of U.S. citizens' jobs by aliens) are much less significant than the political rhetoric would have us believe. Drug laws and immigration laws are attempts to prohibit mutually beneficial exchanges. Once again, it must be emphasized that the arguments presented here are not indictments of contracting out per se. Rather, they are intended to raise concerns about the results of enhancing technological efficiency in the production of victimless crime enforcement in response to the demands of powerful political interests. If Hitler had contracted out some of his law enforcement services, the rounding up and extermination of Jews might have been accomplished at a lower per-unit cost and more Jews could have been exterminated, but the fact that more of these politically defined "criminals" could have been exterminated more "efficiently" in a technological sense does not mean that the contracting out of this process would have been desirable. Indeed, if contracting out enhances technological efficiency, as its advocates argue it will, then it may encourage even more intensive law enforcement efforts against victimless crimes, thereby reducing both allocative efficiency and liberty.

IV. CONCLUSIONS

When contracting out is considered in the narrow sense of technological efficiency, contracting for prison services appears to be very desirable. But it must be recognized that the lower costs of prisons that can result from contracting out could make imprisonment even more attractive as

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an "easy" solution to a wide variety of political problems. When contracting is considered in a broader sense, either in terms of an allocative efficiency or a liberty norm, it may not be as desirable. The concerns raised here go beyond the "moral" issues often discussed in the contracting debate, however. As Logan (1990, p. 49) explains, critics of contracting out for prison services often contend that this is a function that should only be provided by government. Logan convincingly refutes this argument, in part by exploring the question "By what right does the state imprison?" He points out, á la Locke, that authority does not originate with the state, but rather is granted to the state by individuals. Thus, government's right to imprison is itself a power that private citizens have delegated to the state, and "any *legitimate* governmental authority may be further delegated, through government, to private agents" (p. 53; emphasis added). The suggestion here is that some things for which government uses imprisonment are not "legitimate" from the perspective of either allocative efficiency or liberty.

In the context of interest-group politics, the "efficiency" that is gained through contracting out is a very narrow concept of efficiency: Specifically, what interest groups demand may get produced at a lower cost.[13] A substantial part of the reasons for imprisonment of drug users and illegal aliens is apparently that some people get utility from restricting other people's freedom to choose in the first instance, and some people collect rents by restricting access to low-cost labor in the second. As long as the rest of the criminal justice system remains largely controlled by the government and therefore by interest-group politics, prisons will be used in undesirable ways, and if the cost of doing so is reduced through contracting out, then the system as a whole could actually end up doing even more undesirable things.[14] The same appears to be true in many other areas of contracting out for government services.

[13] It should be noted that when contracting out for prisons is considered in the context of the interest group process of political allocation decisions it also become clear that there are forces at work which may actually limit the technological efficiency benefits relative to their potential (Benson, forthcoming). That is, it may be that governments will do a poor job of contracting just as they do with most of the other tasks they undertake. In the case of victimless crimes, the fact that government does a bad job of contracting out may turn out to be desirable, of course.

[14] Of course, prisons might also be used to do desirable things, like removing violent criminals from society, punishing criminals who do leave victims, deterring potential

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In this regard, for instance, note that there are actually third-party effects which were not discussed above but which are associated with both drug use and immigration. They get relatively little political play, however, perhaps because they are actually a result of the government provision of many free-access resources. In a true free-market environment, all roads, streets, schools, welfare (charity) programs, and so on, would be private. As a result, an immigrant or a drug user would have to pay for access to all of these facilities and services. However, when government provides such services and grants free access to anyone, then a domestic drug user or an illegal alien who gets past the borders adds to the congestion costs that are inevitable with such free access goods (Benson, 1994). Drug markets can be established on public streets and sidewalks, crowding out others who might want to use those same streets and sidewalks. Similarly, both a drug user and an immigrant can roam the public streets and roads, loiter on them, harass passers-by through robbery or begging, and the like. Drug users who spend large portions of their income on drugs, because drugs are sold in black markets, can count on the public welfare programs and public schools to provide some care for their children, thus raising taxpayer costs and competing with relatively legitimate claimants to these services. Immigrants can also send their children to the public schools, to the detriment of local taxpayers and resident children with whom they compete for the attention of teachers. They can often obtain various welfare benefits (perhaps fraudulently), and indeed, may be attracted to the country by the prospects of public welfare (and/or public schools) rather than by the prospects of a job. As with prisons, contracting out for the provision of public streets, schools,

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criminals, and rehabilitating existing criminals. Thus, contracting out to do these things may be desirable from an allocative efficiency perspective as well as a liberty perspective. The question thus becomes, Is it appropriate to lower the costs of doing undesirable things, making it more likely that they will be done, in order to lower the cost of doing some desirable things? The answer is not always obvious. In fact, many of these things are desirable only in the context of the existing institutional setting. An alternative that emphasizes restitution for victims rather than physical punishment for offenders would lead to a very different system in which prisons would play a much smaller role (Benson, 1990, pp. 352–57). In such a system, where in effect both the demand and the supply sides of the legal system are privatized (pp. 349–78), "privatization" can be very desirable, in part because if demand is also privatized victimless crimes are much less likely to be relevant.

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and welfare programs might improve the technological efficiency of their production, but it would not reduce these third-party effects; it would not improve allocative efficiency. Exclusionary laws, such as those regarding drug use and immigration, may reduce the crowding to a degree, and contracting out for prisons and police probably improves the technological efficiency of exclusion. However, these third-party effects can be internalized much more effectively through complete privatization of free-access facilities and services, an alternative that does not require limits on individuals' liberty to enter into voluntary exchanges. Thus, those of us who are concerned with promoting the complementary goals of liberty and allocative efficiency should be focusing our efforts on undermining government's (and therefore interest groups') power to decide how resources should be allocated, rather than blindly supporting the replacement of bureaucrats with contractors who may simply do a better job at restricting liberty and perpetuating allocative inefficiency.

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THE POLITICAL ECONOMY OF THE ANTIFEDERALISTS

James P. Philbin

The eighteenth-century opponents of the U.S. Constitution have been derided by some historians as politically naive and intellectually inferior to their Federalist counterparts. A noted chronicler of the Antifederalists labeled them as "men of little faith" due to their distrust of government.[1] In one sense, such characterizations are correct: The Antifederalists were badly outmaneuvered by the shrewder Federalists who used a number of underhanded, and frankly illegal tactics to secure ratification of the Constitution.[2] However deficient the Anti-

[1] Cecilia M. Kenyon, "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *William and Mary Quarterly*, third series, 12 (January 1955): 3–43.

[2] One of the Federalists' harshest critics was "Centinel." Believed to be Samuel Bryan, the son of Pennsylvania Supreme Court judge George Bryan, Centinel charged the Federalists with tampering of the mails to impede communications between the Antifederalists. Centinel was also unafraid of attacking the most revered of Federalist leadership. For instance, he claimed that Benjamin Franklin was senile at the time of the convention and that George Washington had been "duped." For a brief biographical sketch of Bryan, and his denunciations of Franklin and Washington, see Merrill Jensen, John P. Kaminski, and Gaspare J. Saladino, eds., *The Documentary History of the Ratification of the Constitution* (Madison, Wisc.: State Historical Society of Wisconsin, 1976–), vol. 13, pp. 326n and 327n. These volumes will be identified below as *Doc. Hist.*, followed by the appropriate volume and page number. For Centinel's and other Antifederalists' suspicion of postal irregularities, see *Doc. Hist.* 16, Appendix II, pp. 540–96.

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federalists were in terms of practical politics, their thoughts on political theory and the nature of government—heavily criticized by modern scholars—far surpassed the pronouncements of their more celebrated foes.

The system of checks and balances praised by historians, political scientists, and by those Federalists who contended that it would limit the government was held with little regard by most of the Antifederalists.[3] Instead, the Antifederalists continually pointed to the unlimited taxing power that the Constitution vested in Congress and its ability to raise and maintain a standing army during peacetime. They saw that the unlimited right of Congress to tax and establish an army would eventually lead to an empire both at home and abroad.[4] They also expressed concerns about the executive and judiciary branches of the new government, fearing they would become powerful and uncontrollable tyrannies. The Antifederalists were so leery that the Constitution would be used as a tool to crush individual liberty that they insisted a Bill of Rights be attached to it—an act to which the Federalists only reluctantly agreed.

Although a further recognition and appreciation of their political perspicacity is surely needed, the Antifederalist political philosophy is not the subject of this paper. Instead, this essay will focus on the economic views espoused by the Antifederalists on the different aspects of political economy. Hopefully, this paper will illuminate that the Antifederalists' understanding of political economy and the effects of government intervention was as fully astute as was their political theory.

I. TAXES

Every state must be able to extract revenue from its subjects in order to survive. Naturally, the framers and detractors of a new government would spend a considerable amount of time debating the issue of taxation. It is no coincidence, therefore, that along with the topic of a standing army, taxation received the most attention from Antifederalist writers.

[3] "Aristocrotis" trenchantly asked in an essay, "Do Checks and Balances Really Secure the Rights of the People?" See Morton Borden, ed., *The Antifederalist Papers* (East Lansing, Mich.: Michigan State University Press, 1965), pp. 143–49. "Aristocrotis" was William Petrikin, a Pennsylvania tailor and Scottish immigrant. See *Doc. Hist.* 2, pp. 696n, 731–32, 443n, and 674n.

[4] For an analysis of the Antifederalists' position on foreign policy see Jonathan Marshall, "Empire or Liberty: The Antifederalists and Foreign Policy, 1787–1788," JOURNAL OF LIBERTARIAN STUDIES 4 (Summer 1980): 233–54.

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The Antifederalists' fundamental and most enduring objection against the Constitution was that it contained no limit on the central government's ability to raise taxes. The unlimited power of Congress to increase taxes was a constant theme in nearly all of the Antifederalist writings. Moreover, they feared that this power would be used in turn to maintain a standing army.

One of the most eloquent and erudite opponents of the Constitution was the "Federal Farmer."[5] He consistently pointed to the new Congress's power to raise taxes without limit, and urged further restrictions on Congress: "Still the powers of the union in matters of taxation, will be too unlimited. . . . Further checks, in my mind, are indispensably necessary. Nor do I conceive, that as full a representation as is practicable in the federal government, will afford sufficient security."[6] Patrick Henry concurred with the Federal Farmer and countered those Federalists who claimed that the threat of removal from office through democratic elections would limit taxation:

> I shall be told in this place, that those who are to tax us are our representatives. To this I answer, that there is no real check to prevent their ruining us. There is no actual responsibility. The only semblance of a check is the negative power of not re-electing them. This, sir, is but a feeble barrier, when their personal interest, their ambition and avarice, come to be put in contrast with the happiness of the people. All checks founded on anything but self-love, will not avail.[7]

One of the great libertarian tenets propounded constantly by nearly all of the Antifederalists was their aversion to a standing army. The oppo-

[5] Probably one Richard H. Lee, though there are doubts about this. See Gordon S. Wood, "The Authorship of the *Letters of the Federal Farmer*," *William and Mary Quarterly*, third series, 31 (April 1974): 299–308; Steven R. Boyd, "The Impact of the Constitution on State Politics: New York as a Test Case," pp. 270–303 in *The Human Dimensions of Nation Making: Essays on Colonial and Revolutionary America*, ed. James Kirby Martin (Madison, Wisc.: State Historical Society of Wisconsin, 1976), p. 276; and Herbert J. Storing, ed., *The Complete Anti-Federalist*, 7 vols. (Chicago: University of Chicago Press, 1981), vol. 2, pp. 214–17.

[6] Walter Hartwell Bennett, ed., *Letters from the Federal Farmer to the Republican* (Tuscaloosa, Ala.: University of Alabama Press, 1978), p. 120.

[7] Quoted in Kenyon, "Men of Little Faith," p. 21.

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nents of the Constitution were extremely reluctant to lend their support for ratification without an explicit provision outlawing such an institution. They reasoned that the lack of a limit on federal taxation was a first step towards the establishment of a permanent military. The dreaded combination of the "purse and sword" uniting under the Constitution was a dangerous and distinct possibility. Their objections to the power of Congress to increase taxes without limits, therefore, stemmed in large measure from their fears that the revenues would be used to fund a permanent army and navy.[8]

"Brutus"[9] feared the power given to the government in order to create and maintain an army: "The power to raise armies, is indefinite and unlimited, and authorizes the raising [of] forces, as well in peace as in war."[10] "An Old Whig"[11] anticipated that the federal revenues would be channeled into military spending: "*The unlimited power of taxation* will give them the command of all the treasures of the continent; *a standing army* will be wholly at their devotion." He forewarned his fellow countrymen that if the new government were permitted unlimited taxing power, military despotism would soon follow.[12]

"Centinel" cautioned that a standing army would not only be an expensive burden, but would be used by the central government to enforce collection of its taxes.[13] Both he and "Cato"[14] worried that under the

[8] Jackson Turner Main, *The Antifederalists: Critics of the Constitution, 1781–1788* (New York: W.W. Norton, 1974), pp. 147–48.

[9] Probably Robert Yates, a New York delegate to the Constitutional Convention. See *Doc. Hist.* 3, p. 412n.

[10] *Doc. Hist.* 15, p. 336.

[11] "An Old Whig" is believed to have been written "by a club" that included George Bryan, John Smilie and James Hutchinson (see *Doc. Hist.* 13, p. 376n). George Bryan was a Pennsylvania judge and father of Samuel Bryan, who was the author of the Centinel essays. John Smilie immigrated from Ireland to Lancaster County, Pennsylvania in 1760. As a delegate to the Constitutional Convention, he voted against ratification. Earlier in his career he demonstrated his opposition to statism as he lobbied against the re-chartering of the Bank of North America. James Hutchinson was a physician and Surgeon General of Pennsylvania from 1777 to 1784 and later opposed ratification of the Constitution. See *Doc. Hist.* 2 pp. 727–34.

[12] *Doc. Hist.* 13, p. 540.

[13] *Ibid.*, pp. 465–66.

[14] Believed to be New York Governor George Clinton. See *ibid.*, p. 255n.

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Constitution the chief executive and Congress could maintain an army for a period of up to two years. Centinel argued that the new country was going farther towards militarism than its former colonial ruler, Great Britain, where the army could only be commissioned by Parliament for one year at a time.[15]

William Symmes observed that the newly designed Congress was insulated from any check on its authority, and he questioned the acumen of those who trusted that the legislative body would always design its tax policy for the public good: "This body is not amenable to any tribunal, and therefore, this Congress can do no wrong. It will not be denied that they may tax us to any extent; but some gentlemen are fond of arguing that this body never will do any thing but what is for the common good."[16] Symmes asserted that if the new government were allowed discretionary taxing power, it would undoubtedly make use of the privilege and subjugate the very people who granted it such largesse. He pleaded strongly to the representatives at the Massachusetts Ratifying Convention not to acquiesce in delegating greater sovereignty to the state:

> The paragraph in question is an absolute decree of the people. The Congress *shall* have power. It does not say that they shall *exercise* it; but our necessities say they *must*, and the experience of ages say that they *will*; and finally, when the expenses of the nation, by their ambition are grown enormous, that they will oppress and subject; for, sir, they may lay taxes, duties, imposts and excises! . . . Here sir, I raise two objections; first, that Congress should have this power. It is a universal, unbounded permission; and as such, I think, no free people ought ever to consent to it, especially in so important a matter as that of property.[17]

Seething with contempt, Symmes described the type of tax collectors that would harass and burden the people if Americans granted Congress unrestricted taxing power:

[15] *Doc. Hist.* 14, p. 184, and 13, p. 463.

[16] Symmes was a graduate of Harvard and a lawyer (*Doc. Hist.* 14, p. 107n). The quote is from his speech at the Massachusetts Ratifying Convention, in Jonathan Elliot, ed., *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution*, second edition (Philadelphia: J.B. Lippincott Company, 1936), vol. 2, p. 71.

[17] *Ibid.*, pp. 72–73.

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> For, sir, I also disapprove of the power to collect, which is here vested in Congress. It is a power, sir, to burden us with a standing army of ravenous collectors,—harpies, perhaps, from another state, but who, however, were never known to have bowels for any purpose, but to fatten on the life-blood of the people. In an age or two, this will be the case; and when the Congress shall become tyrannical, these vultures, their servants, will be the tyrants of the village, by whose presence all freedom of speech and action will be taken away.[18]

Symmes' protestations against the unlimited tax-gathering prerogative of the newly designed Congress derived from the deep distrust of government that he and most of the other Antifederalists held. Symmes and his fellow libertarians knew from their own experiences and the historical record that governments have an insatiable tendency to expand. To the Federalists and historians like Kenyon, such thinking was negative and counterproductive. The Antifederalists and those who were suspicious of government, however, saw the state as a destructive force, and the allowance of such a feature as unbounded confiscatory taxation was intolerable. Although Symmes reluctantly agreed to support the Constitution after a number of amendments were attached to it, the following passage is a cogent reflection of the fear and distrust that he, and the Antifederalists, felt not only for the newly proposed state, but for governments in general: "In short, we know that all governments have degenerated, and consequently have abused the powers reposed in them; and why we should imagine better of the proposed Congress than of myriads of public bodies who have gone before them, I cannot at present conceive."[19]

Despite the checks and balances built into the federal system, the Federal Farmer claimed that the individual states would provide a superior bulwark to Congress's tax-raising ability. To his dismay, however, the Constitution left no room for the states to thwart the national government from confiscating wealth and raising an army:

> [T]he state governments then we are told will stand between the arbitrary exercise of power and the people: true they may, but armless and helpless, perhaps, with the privilege of making a noise when hurt—this is no more than individuals may do. Does the Constitu-

[18] *Ibid.*, pp. 73–74.

[19] *Ibid.*, p. 72.

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> tion provide a single check for a single measure, by which the state governments can constitutionally and regularly check the arbitrary measures of Congress? Congress may raise immediately fifty thousand men, and twenty millions of dollars in taxes, build a navy, model the militia, etc. and all this constitutionally. Congress may arm on every point, and the state governments can do no more than an individual, by petition to Congress, [to] suggest their measures are alarming and not right.[20]

Many Antifederalists, including Brutus, opposed the large delegation of taxing authority that the central government would receive because it would ultimately destroy the sovereignty of the individual states.[21] They adroitly reasoned that the taxpayers would be better able to monitor a local government than a distant one. If state sovereignty were infringed upon, Americans would then find themselves back to their colonial status where they had little control over the imperial government.

Pennsylvania's Antifederalists raised concerns about taxation and state sovereignty similar to those raised by Brutus. They charged that under the new regime the states would be unable to prevent the central government from expropriating its inhabitants' property. Under the Articles of Confederation, the states could negate any confederate government levy, but the Constitution rendered them helpless to resist similar federal intrusions.[22]

The ambiguity of the "necessary and proper" and "general welfare" clauses in the Constitution was attacked by "A Federal Republican."[23] He complained that since the states would be unable to erect tariffs they would be left with only unavoidable direct taxes which he described as "egregiously abusive." On top of negating the states' power to raise income through the impost, the federal government would determine for itself what revenues were "necessary":

[20] *Letters from the Federal Farmer*, p. 64.

[21] For Brutus's comments on this issue see *Doc. Hist.* 15, p. 112.

[22] Those Pennsylvanians who refused to vote for ratification agreed to sign a document voicing their objections to the Constitution entitled "The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to their Constituents." The document is believed to have been written by Samuel Bryan (Centinel). For the dissenting members' fear of the destruction of state's rights, see *Doc. Hist.* 15, p. 31. For the authorship of the pamphlet see *Ibid.*, p. 9n.

[23] Authorship unknown. See *Doc. Hist.* 14, p. 255n.

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> To give them the power of laying taxes, duties, imposts and exise, by way of providing for the welfare of the United States, and then constitute them judges of what is necessary for these purposes, is giving them power to satisfy at the expence of the states, any whim which ambition or the love of ostentation might suggest to them. But yet every law thus made will be binding: For they have an additional power expressly granted them, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all the powers vested by this constitution in the government of the United States, or in any department or office thereof."[24]

The Federal Farmer was equally alarmed by the general welfare feature, predicting that it would be a convenient mechanism for legislators to justify additional taxation. While making it easier for the government to inflict taxation on its citizens, the Constitution and its general welfare clause provided no safeguard from abuse, with only revolution as a viable alternative: "[A]nd if they misjudge of the general welfare, and lay unnecessary oppressive taxes, the Constitution will provide, as I shall hereafter shew, no remedy for the people or states—the people must bear them, or have recourse, not to any Constitution checks or remedies, but to that [of] resistance which is the last resort, and founded in self-defense."[25]

Many Federalists believed that the general welfare clause would limit Congressional taxation to cover only those purposes that served the common good. Brutus trenchantly responded that the nebulous wording of the general welfare clause would allow the government to interpret for itself what the public good was, and how much taxation would be needed to serve it:

> I would ask those, who reason thus, to define what ideas are included under the terms, to provide for the common defense and general welfare? Are these terms definite, and will they be understood in the same manner, and to apply to the same cases by every one? No one will pretend they will. It will then be matter of opinion, what tends to the general welfare; and the Congress will be the only judges in the matter.[26]

[24] *Ibid.*, p. 269.

[25] *Letters from the Federal Farmer*, p. 62.

[26] *Doc. Hist.* 15, pp. 114–15.

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He recognized that since everyone has different value scales, the general welfare could never be defined without necessarily infringing on someone's rights. He argued that the most despotic government could claim that its tyrannical actions were for the public good: "The government would always say, their measures were designed and calculated to promote the public good; and there being no judge between them and the people, the rulers themselves must, and would always, judge for themselves."[27]

The magnitude by which the government could manipulate the general welfare clause to expand taxation was apparent to Centinel: "Whatever taxes, duties, and excises that the Congress may deem necessary to the *general welfare* may be imposed on the citizens of these states and levied by their officers."[28] And like Brutus and A Federal Republican, Centinel pointed out that the Congress itself would determine what was necessary for the general welfare without any interference from the states:

> The Congress [is] to be the absolute judges of the propriety of such taxes, in short [it] may construe every purpose for which the state legislatures now lay taxes, to be for the *general welfare*, [it] may seize upon every source of taxation, and thus make it impracticable for the states to have the smallest revenue, and if a state should presume to impose a tax or excise that would interefere with a federal tax or excise, congress may soon terminate the contention, by repealing the state law.[29]

The legitimate function of government, and how much revenue it should be allowed, was contemplated by "Philadelphiensis."[30] Applying liberal Jeffersonian principles to the subject, Philadelphiensis maintained that the sole purpose of government was to protect the lives and property of its subjects. Any action beyond such a function was unnecessary: "The only thing in which a government should be efficient, is to protect the *liberties*, *lives*, and *property* of the people governed, from foreign and domestic violence. This, and this only is what every government should do effectually. For any government to do more than this is impossible,

[27] *Ibid.*, p. 115.

[28] *Doc. Hist.* 14, p. 344.

[29] *Ibid.*, pp. 344–45.

[30] Probably Benjamin Workman, a mathematics tutor at the University of Pennsylvania. *Doc. Hist.* 13, p. 573n.

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and every one that falls short of its is defective." Under this paradigm of government, taxes should be kept to a minimum. The Constitution, however, violated the bounds of what Philadelphiensis thought the state should do, for it allowed the government a claim on a large amount of wealth and provided no guarantee of individual liberty.[31]

II. MONEY

The bulk of Antifederalist opinion on monetary policy revolved around the issue of paper money. The Federalists believed that adoption of the Constitution would put an end to the reckless monetary practices pursued by many of the states since the Revolution. The perception that the Constitution would curtail inflation was a key factor in swinging popular support for ratification. Throughout the Confederation period, Americans had suffered through a painful series of booms and busts. The Federalists understood that portraying their opponents as wild inflators would give them a great advantage in securing ratification. Shrewder Antifederalists who favored paper money were aware of the Federalists' tactics and wisely toned down their views on money in their debates over the Constitution.[32] Hard-money Antifederalists, however, did not see the adoption of the Constitution as a panacea for the eradication of monetary ills. This contingent was skeptical of granting the central government sole monopoly power over the money supply, recognizing that the Federalists were exploiting individual states' destructive monetary policies for their own political advancement.

The Antifederalists were not a monolithic group of inflationists. Instead, their stance on money differed according to each person's financial condition, his understanding of monetary theory, and the constituency he represented. Positions on monetary issues were not rigidly divided along socioeconomic lines: Hard-money advocates could be found among agrarians, while some proponents of inflation were members of commercial enterprises. Taking this into consideration, Antifederalist monetary thought can be roughly divided into three categories: (1) hard-money theorists; (2) those who favored paper money to relieve debt; and (3) those who sought the use of monetary expansion to alleviate depressions.

[31] *Doc. Hist.* 14, pp. 351–52.

[32] Main, *The Antifederalists*, pp. 166–167.

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The expositions by the hard-money wing of Antifederalism demonstrated that these libertarians had a solid understanding of the theory of money and its role in the market economy. They saw the pernicious effects of paper money and argued against the continuation of its use.

Centinel realized that for the colonists to avoid paying direct taxes, paper money had to be used to conduct the war against Britain. He noted the ill effects that the inflation had on the young country's economy:

> [W]hen we engaged in the expensive contest with Great Britain, the Congress sensible of the difficulty of levying the monies necessary to its support, by *direct* taxation, had recourse to . . . emitting bills of credit, and thus postponed the necessity of taxation. . . . [T]he bills of credit had suffered such a depreciation from the excessive quantities in circulations, that they ceased to be useful as a medium. The country at this period, was very much impoverished and exhausted; commerce had been suspended for near six years; . . . the evils of the depreciation of the paper money, which fell chiefly upon the patriotic and virtuous part of the community, had all concurred to produce great distress throughout America.[33]

The Federal Farmer also pointed to wartime inflation as the culprit for the country's economic woes. Contrary to many Federalists who boasted that the Constitution would lead to prosperity, the Federal Farmer believed that post-Revolutionary America was well on the way to recovery:

> It was the war that disturbed the course of commerce, introduced floods of paper money, the stagnation of credit, and threw many valuable men out of steady business. From these sources our greatest evils arise; men of knowledge and reflection must perceive it;—but then, have we not done more in three or four years past, in repairing the injuries of the war, by repairing houses and estates, restoring industry, frugality, the fisheries, manufactures.[34]

The Federal Farmer was acutely aware that his opponents were using the states' inflationary policies as ammunition to persuade the public to adopt the Constitution. He blamed the state legislators for irresponsible monetary programs that provided this opportunity for the Federalists:

[33] *Doc. Hist.* 14, p. 318.

[34] *Letters from the Federal Farmer*, p. 116.

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> Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which, in some cases, has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly affecting their favorite object.[35]

He anticipated that if a despotic government emerged, the blame should be placed on those who pursued currency expansion: "[S]hould an oppressive government be the consequence of the proposed change, posterity may reproach not only a few overbearing unprincipled men, but those parties in the states which have misued their powers." The Federal Farmer concluded that the many who opposed the Constitution as being too statist might be swayed to support the document if it were perceived as anti-inflationary: "The conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of—when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men . . . [will] become sufficiently uneasy.[36]

To combat the inflation problem, the Federalists recommended that the central government be awarded sole monopoly power to issue currency. Naturally, hard-money Antifederalists resisted such an autocratic solution. "Deliberator"[37] displayed typical libertarian suspicion of such a scheme and asked what would prevent the national government from an overissuance of money if it were granted complete control:

> Though I believe it not generally so understood, yet certain it is, that Congress may emit *paper money*, and even make it legal tender throughout the United States, and, what is still worse, may, after it shall have depreciated in the hands of the people, call it in by taxes, at any rate of depreciation (compared with gold and silver)

[35] *Doc. Hist.* 14, p. 22.

[36] *Ibid.*

[37] Authorship unknown. See Storing, *Complete Anti-Federalist*, vol. 3, p. 176.

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> which they may think proper. For though no state can emit bills of credit, or pass any law impairing the obligation of contracts, yet the Congress themselves are under no constitutional restraints on these points.[38]

On debtor relief, "Agrippa"[39] warned that tender laws and stay legislation would lead to the disruption of lending and discourage the savings that are essential for business expansion:

> The credit of our merchants is, therefore, fully established in foreign countries. . . . We ought, therefore, to be exceedingly cautious about diverting or restraining it. Every day produces fresh proofs, that people, under the immediate pressure of difficulties, do not, at first glance, discover the proper relief. The last year, a desire to get rid of embarrassments induced many honest people to agree to a tender act, and many others, of a different description, to obstruct the courts of justice. Both these methods only increased the evil they were intended to cure.[40]

Agrippa added that instead of bailing out debtors, the sanctity of contracts should be upheld. He rejected the notion that credit transactions were advantageous to only one side:

> Experience has since shown, that, instead of trying to lessen an evil by altering the present course of things, every endeavor should have been applied to facilitate the course of law, and thus to encourage a mutual confidence among the citizens, which increases the resources of them all, and renders easy the payment of debts. By this means one does not grow rich at the expense of another, but all are benefited.[41]

Antifederalist advocacy of paper money was closely related to the issue of debtor relief. For the most part the demand for money creation was

[38] *Ibid.*, pp. 179–80.

[39] Most scholars believe that James Winthrop, a Harvard librarian, and John Winthrop, the son of a mathematics professor, were the authors of the Agrippa essays. See *Doc. Hist.* 15, p. 51n, and 160n; Cecilia M. Kenyon, ed., *The Antifederalists* (Indianapolis: Bobbs-Merrill, 1966; reprinted, Boston: Northeastern University Press, 1985), p. 131; and Storing, *Complete Anti-Federalist*, vol. 4, p. 68.

[40] Storing, *Complete Anti-Federalist*, vol. 4, p. 81.

[41] *Ibid.*

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supported to mitigate the increased burden of debt and taxes, rather than any misguided notion that inflation could lead to prosperity. Agitation for paper money did not solely originate from depressed agrarians or the yeomanry. Many of its exponents were found among commercial groups and the political elite.[42] Moreover, the complaints voiced at the crushing burden of debt was mostly directed at public debt rather than that held by "private" owners.[43] Maryland's financial condition during this period provides an insight into why some Antifederalist leaders supported paper money.

A number of Maryland's prominent paper-money advocates were among the state's Antifederalist leadership. Luther Martin, Samuel Chase, William Paca, and Charles Ridgely had all supported state money emission and were opponents of the Constitution.[44] Although Luther Martin eventually voted for ratification, he continued to call for the use of paper money. Samuel Chase, who had led a number of unsuccessful statewide campaigns to create additional currency, refrained from discussing monetary matters in his opposition speeches at the ratifying convention. Instead, he focused his criticism on the potentiality of a powerful and uncontrollable central government that adoption of the Constitution would entail.[45] A proposed bill of rights attached to the Constitution was not enough to mitigate Chase's fear of aristocratic control of the new government at the expense of the "middling sort."[46] Chase's refusal to broach the subject of money was a wise political tactic, since one of the supposed virtues the Federalists trumpeted about the Constitution was that it would eliminate the various states from pursuing ill-advised inflations. As a protagonist of paper money, Chase would undoubtedly damage his chances of convincing delegates to refuse constitutional ratification if he discussed monetary policy.

[42] Main, *The Antifederalists*, pp. 69–71.

[43] Philip A. Crowl, *Maryland During and After The Revolution* (Baltimore: Johns Hopkins Press, 1943), p. 89.

[44] *Ibid.*, p. 96.

[45] Jane Shaffer Elsmere, *Justice Samuel Chase* (Muncie, Indiana: Janevar Publishing Co., 1980), pp. 32–33.

[46] James Haw et al., *Stormy Patriot: The Life of Samuel Chase* (Baltimore: Maryland Historical Society, 1980), p. 146.

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Victory over the British Empire left Marylanders with a considerable financial debt to repay. On top of wartime obligations, there were pre-war liabilities owed to British lenders that had to be reimbursed according to the terms of the peace treaty. The Maryland government increased the burden of its inhabitants by funding construction of two state colleges despite the remonstrances from lower-income groups.[47] The principal catalyst in the establishment of state-funded colleges was ex-governor Samuel Chase.[48] Opposition to tax-supported higher education and to government largesse in general emanated from Maryland's northern and western counties. Led by Charles Ridgely, the protestors saw little benefit of increased spending on higher education. Although the Ridgely faction opposed Chase on this issue, many of his supporters would align with the former governor in the debate over paper money, as did Ridgely himself.[49]

To further exacerbate Maryland's debt problem, the post-war monetary deflation increased the real value of existing obligations. One petition addressed to the Governor pointed to the root cause of the people's financial difficulties:

> We were unhappily involved in debt before the late war, some of us to British and others to domestic creditors. The state and continental debt incurred during the late war is enormous. The expenses of our civil government are heavy. We are not able to pay the present taxes, and satisfy our creditors. We are really in a most deplorable situation. . . . The very great number of suits for debts in the general court, and in the county courts, prove the melancholy truth. . . . Our property is at the mercy of sheriffs and collectors and [when] sold, will not bring one third its real value.[50]

The solution offered by the petition's authors was money creation by fiat.

Instead of reducing its expenditures and cutting revenues, the state continued to collect taxes and foreclose on property. With little hope of a

[47] Crowl, *Maryland During and After the Revolution*, pp. 84–86.

[48] Haw et al., *Life of Samuel Chase*, p. 132.

[49] *Ibid.*, p. 134.

[50] Quoted in Crowl, *Maryland During and After the Revolution*, p. 90.

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much-needed tax cut, Marylanders sought relief via the printing press.[51] Samuel Chase took the lead in calling for additional currency. The future Supreme Court Justice would certainly benefit from an inflation since he owed a considerable sum to the Maryland treasury, mostly from his holdings of confiscated British property.[52] Although Chase's financial plight played a part in his support of fiat money, he was not alone among the many Marylanders seeking relief.[53]

In 1786, there was enough popular pressure that the House of Delegates passed two resolutions calling for money emission. These and later attempts by paper forces to pass legislation were successfully blocked in the Senate. Although there certainly were widespread demands for debt

[51] *Ibid.*, p. 89. Most historians have mistakenly concurred with Chase and his faction that paper money should have been used to help combat the depression and relieve Marylanders of their debt woes. An example of such thinking can be seen in Haw et al., who support inflation as a cure for the consequences of a depression: "Chase and his allies made a strong case for an emission of currency. Stagnating trade, unemployment, low prices for farm produce, unpaid debts and taxes, property sold under execution for debt at a fraction of its true value—all these conditions were caused in part by a shortage of currency. Increasing the money supply to an adequate level would stimulate trade, help raise prices, make money available for loans, and give the distressed sorely needed help in paying debts and taxes. Paper money had served the colony of Maryland well; surely it would succeed again" (*Life of Samuel Chase*, p. 136). The authors, along with Maryland's paper-money forces, fail to understand that the reason for the "stagnating trade," "low prices," and "unemployment" was due to an earlier inflation that generated a boom and required an unavoidable and necessary bust. Falling prices are a feature of a bust (depression) and are the necessary adjustments that the market undergoes to cleanse itself of an earlier increase in the supply of money. Further increases in paper money "to an adequate level" would only bring about further booms and busts. For the definitive works on the theory of business cycles, see Ludwig von Mises, *The Theory of Money and Credit*, trans. H.E. Batson (London: Jonathan Cape Ltd., 1934; reprinted, Indianapolis: Liberty*Classics*, 1981); idem, *On the Manipulation of Money and Credit*, (Dobbs Ferry, N.Y.: Free Market Books, 1978); and Murray N. Rothbard, *America's Great Depression* (Kansas City: Sheed & Ward, 1963).

[52] Elsmere, *Justice Samuel Chase*, p. 26; Haw et al., *Life of Samuel Chase*, p. 134.

[53] The high-water mark for debt relief came in the depressed years 1786–87. Included in the movement for more money creation was a contingent calling for repudiation. Chase refused to be a part of such a scheme, since he was in the process of negotiating a settlement with British bank officials over the ownership of disputed state of Maryland bank stock. See Elsmere, *Justice Samuel Chase*, p. 29.

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relief in the form of money creation, it is believed that the majority of Marylanders were not in favor of further currency increases.[54]

Defeated in his attempt to forge a paper money bill through the House of Delegates, Chase turned his sights on blocking the ratification of the Constitution. He, and Luther Martin who likewise supported paper money, urged Marylanders to refuse "unconditional" ratification unless the document were first amended.[55] Chase echoed a popular political tenet of the era concerning a distant and far removed central authority when he declared that "a national or general government however constructed over so extensive a country as America must end in despotism."[56] Martin, a more profound political theorist than Chase, argued against the Constitutional provision that prohibited states from emitting bills of credit. He believed his state had benefitted from the printing of money and thought that it was an effective weapon to combat depressions.[57]

A glimpse at Maryland's Antifederalists shows that support for paper money emanated from both the financial and political elite and the less well-to-do. Although some wanted to retain state control of currency in the hope of alleviating their own financial misfortunes, there were others who believed that money creation could be used as a weapon to curb economic downturns.

III. DEFICITS

One of the supposed advantages repeatedly trumpeted by the Framers about the Constitution was that its more "efficient" taxing methods would make it easier to pay off the deficit. Antifederalists were similarly concerned with this problem, but were highly skeptical of their opponents' solutions. "John Dewitt" expressed reservations about adopting the scheme wholeheartedly.[58] "A Friend to the Rights of the People"[59] was certain

[54] Crowl, *Maryland During and After the Revolution*, pp. 102–104, 109; Haw et al., *Life of Samuel Chase*, pp. 142–43.

[55] Crowl, *Maryland During and After the Revolution*, p. 120.

[56] Quoted in Haw et al., *Life of Samuel Chase*, p. 152.

[57] Crowl, *Maryland During and After the Revolution*, p. 131.

[58] Storing, *Complete Anti-Federalist*, vol. 4, pp. 19–20. The identity of "John Dewitt" is not known, but "that he was one of the best stylists of the Antifederalists is certain." Kenyon, *Antifederalists*, p. 89.

[59] Probably Thomas Cogswell, who also wrote the essays of "A New Hampshire Farmer." Storing, *Complete Anti-Federalist*, vol. 4, p. 234.

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the new government's taxing power would be used to cancel the deficit. He anticipated that the proposed system would plunge the country into further debt:

> How idle then is the notion that some entertain, that the establishment of this plan of government will speedily extricate us out of debt, and make us a rich and flourishing people. My opinion is the reverse, that in the complete operation and effect of it, it will be an insupportable burden, that will sink us the deeper under our present embarrassments.[60]

Using libertarian reasoning, A Friend chided the unsuspicious for failing to see that once government was delegated power, that power would invariably be used to crush liberty:

> It may be objected by the friends of the Constitution, that this is all conjecture, and we have no reason to think or even suggest, that Congress will make such a use of their power to enslave the people. I would answer: Have we any reason to think they will not—they are to take a solemn oath to administer the Constitution faithfully, or according to the spirit of it, and if they do, the effect must necessarily be arbitrary government; this has always been pleasing to rulers—and there is no doubt, but they will make use of it, when it is voluntarily given them by the people.[61]

Virginia's great radical orator, Patrick Henry, likewise questioned whether a new form of government was the answer for reducing the national debt. He correctly saw that only the market, and not the political process, could produce the wealth to alleviate the deficit:

> Will the adoption of this new plan pay our debts? This, Sir, is a plain question. It is inferred, that our grievances are to be redressed, and the evils of the existing system to be removed by the new Constitution. Let me inform the Honorable Gentleman, that no nation ever paid its debts by a change of Government, without the aid of industry. You never will pay your debts but by a radical change of

[59] Probably Thomas Cogswell, who also wrote the essays of "A New Hampshire Farmer." Storing, *Complete Anti-Federalist*, vol. 4, p. 234.

[60] *Ibid.*, p. 240.

[61] *Ibid.*

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> domestic economy. . . . The evils that attend us, lie in extravagance and want of industry and can only be removed by assiduity and economy.[62]

Asking whether the Constitution would promote the necessary conditions for wealth formation, Henry warned that if the proposed plan failed to encourage industry or shrink the debt, then the people would eventually suffer:

> Will this new system promote manufactures, industry and frugality? If instead of this, your hopes and designs will be disappointed; you relinquish a great deal, and hazard infinitely more, for nothing. Will it enhance the value of your lands? Will it lessen your burdens? Will your looms and wheels go to work by the act of adoption? If it will in its consequence produce these things, it will consequently produce a reform, and enable you to pay your debts. Gentlemen must prove it. I am a skeptic—an infidel on this point. I cannot conceive that it will have these happy consequences.[63]

The same objections the Antifederalists voiced against the unlimited power to tax vested in Congress by the Constitution were repeated in their discussions of the national debt. A Federal Republican realized that Congress had no restrictions on the amount of deficit it could incur: "But on the other hand, the government of the United States has an enormous power of raising money in every way as well as that of contracting debts at *pleasure*."[64] A state's rights advocate, A Federal Republican was concerned that the debt would be used to erode state sovereignty vis-á-vis the central government. Moreover, he understood that an increased deficit would necessarily mean a heavier tax burden.[65]

The "necessary-and-proper clause" in the Constitution and its potential effect on the public debt caused considerable alarm among Antifederalist commentators. A Federal Republican believed that the necessary-and-proper clause would allow the government's budget to expand infinitely. Like A Federal Republican, Brutus was disturbed that the ambig-

[62] *Doc. Hist.* 9, pp. 1055–56.

[63] *Ibid.*

[64] *Doc. Hist.* 14, p. 269.

[65] *Ibid.*, pp. 269–70.

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uous wording of the phrase would be interpreted in such a way as to expand both the deficit and state power.[66] He was also worried that the deficit could be used as a convenient tool to support and fund a standing army—the Antifederalists' most hated institution.

The lack of a check on the debt-making power of the central government drew an incisive response from Brutus, who perceptively predicted that the new Congress would spend the nation into economic ruin:

> The power to borrow money is general and unlimited. . . . Under this authority, the Congress may mortgage any or all the revenues of the union. . . . By this means, they may create a national debt, so large, as to exceed the ability of the country ever to sink. I can scarcely contemplate a greater calamity that could befall this country, than to be loaded with a debt exceeding their ability ever to discharge. If this be a just remark, it is unwise and improvident to vest in the general government a power to borrow at discretion, without any limitation or restriction.[67]

He pointed out that the much-criticized Articles of Confederation provided a superb check on the government's deficit-making capacity and saw that the new system could be vastly improved if it incorporated some of the latter's features:

> The constitution should therefore have so restricted, the exercise of this power as to have rendered it very difficult for the government to practise it. The present confederation requires the assent of nine states to exercise this, and a number of the other important powers of the confederacy—and it would certainly have been a wise provision in this constitution, to have made it necessary that two thirds of the members should assent to borrowing money.[68]

To avoid the creation of a powerful new government, a number of Antifederalists urged the selling of public lands to reduce the debt. Agrippa believed that the individual states were more than capable of disposing of the lands and managing their own commerce. In regard to the states' internal trade and the dispersal of the public domain, he did not see where

[66] *Doc. Hist.* 15, p. 335.

[67] *Ibid.*

[68] *Ibid.*, pp. 335–36.

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the newly proposed regime would be of any advantage and disapprovingly called it both "useless and burdensome."[69] "Candidus"[70] believed that the sale of land, rather than the Constitution, could effectively relieve the foreign and domestic debt without endangering the individual states' sovereignty.[71]

"A Gentleman in a Neighbouring State" wanted to obtain accurate figures on the extent of the nation's indebtedness and an estimate of the projected costs of the new government. He warned that the people should be aware of the exact magnitude of the deficit before they agreed to "so liberal and extensive a grant of *power* and *property* to any body of men in these United States." The writer contended that without sufficient knowledge of the facts it would be extremely dangerous to delegate to a government such a tremendous authority: "To grant therefore such an ample power of taxation, and the right of soil, to the amount of millions, upon the recommendation of this hon. Convention, without either knowing the amount of the national debt, or the annual expences of government, would not argue, in my opinion, the highest degree of prudence."[72]

Outright repudiation was voiced by some Antifederalists as a solution to the problem of the national debt. In one Boston newspaper, *The American Herald*, "A Non-Impost Man" radically asserted that an impost should not be levied to pay off the deficit. The debt should remain unfunded instead of inflicting an impost on the people. He apparently saw no problem in not paying the imbalance: "The debt *need not be paid*; national credit is a proud fancy; funds are the means to *betray* our liberties; a revenue *impoverishes* the people; and the wisdom of Congress is the ambition of despots."[73]

IV. BUREAUCRACY

The creation of a new central government meant an increased bureaucracy and an additional expense for the nation's taxpayers. This did not

[69] Storing, *Complete Anti-Federalists*, vol. 4, p. 76.

[70] Either Samuel Adams or Benjamin Austin, Jr. See *Ibid.*, vol. 4, p. 124.

[71] *Ibid.*, pp. 133–34.

[72] *Ibid.*, p. 11.

[73] *American Herald*, April 24, 1786.

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escape the Antifederalists, who criticized both the projected costs and the personnel who would staff the state apparatus.

The Federal Farmer's discussion of bureaucracy contained some of the keenest insights on government and its effect on society that the era ever produced. His was an embryonic class analysis of society that later became systematized by John C. Calhoun.[74] In *A Disquisition on Government*, Calhoun succinctly explained how the state through its taxing power necessarily divides society into two distinct classes. One class consists of tax producers—individuals who pay taxes.[75] Under Calhoun's and the later Austrian economists' frameworks, the tax producers are those productive members of society who engage in the activities of homesteading, production, and exchange which leads to the creation of wealth. The German sociologist Franz Oppenheimer has called this type of human action the "economic means." The (naturally much smaller class) supported by taxes is the tax consumers. Oppenheimer labels the method by which this group acquires income as the "political means."[76]

The Federal Farmer recognized the distinction between tax producers and tax consumers. Although he thought government was necessary, he understood that it was a drain on the productive sector: "Military, and especially civil establishments, are the necessary appendages of society; they are deductions from productive labor, and substantial wealth, in proportion to the number of men employed in them; they are oppressive where unnecessarily extended and supported by men unfriendly to the people."[77]

By contrast, the Federal Farmer spoke in affectionate terms of those engaged in wealth formation: "The honest, the modest, and the indus-

[74] John C. Calhoun, *Disquisition on Government and Selections from the Discourse*, edited, with an introduction by C. Gordon Post (New York: Liberal Arts Press, Inc., 1953), pp. 16–19. Murray N. Rothbard's *Power and Market* (Kansas City: Sheed Andrews and McMeel, 1970), pp. 14–16, contains an early recognition of Calhoun's analysis. For an insightful exposition of class analysis from a similar perspective see Hans-Hermann Hoppe, "Marxist and Austrian Class Analysis," JOURNAL OF LIBERTARIAN STUDIES 9 (Fall 1990): 79–93.

[75] The contention that bureaucrats pay taxes is refuted in Rothbard, *Power and Market*, p. 142.

[76] Franz Oppenheimer, *The State*, translated by John M. Gitterman (Bobbs-Merrill, 1914; reprinted, New York: Free Life Editions, 1973), p. 12.

[77] *Letters from the Federal Farmer*, p. 84.

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trious part of the community content themselves, generally, with their private concerns; they do not solicit those offices which are the perpetual source of cabals, intrigues, and contests among men of the former description, men embarrassed, intriguing, and destitute of modesty." He contemptuously categorized office seekers with army staffs: "We all agree, that a large standing army has a strong tendency to depress and enslave the people; it is equally true a large body of selfish, unfeeling, unprincipled civil officers has a like, or a more pernicious tendency to the same point."[78] On those who would attain jobs in the newly formed government, he harshly added: "[B]ut as to those who expect employments under the new Constitution; as to those weak and ardent men who always expect to be gainers by revolutions, and whose lot it generally is to get out of one difficulty into another, they are very little to be regarded: and as to those who designedly avail themselves of this weakness and ardor, they are to be despised."[79]

The Federal Farmer voiced concerns about the plans that Congress had for establishing a federal city that would house the new government. Applying his class analysis, he understood that unlike other cities, the proposed capital would be fundamentally different. While most cities were dynamic centers of commercial activity and trade, the federal capital would only produce taxes and regulations, and attract power-hungry knaves from all over:

> This city, and the government of it, must indubitably take their tone from the characters of the men, who from the nature of its situation and institution, must collect there. This city will not be established for productive labor, for mercantile, or mechanic industry; but for the residence of government, its officers and attendants. If hereafter it should ever become a place of trade and industry, in the early periods of its existence, when its laws and government must receive their fixed tone, it must be a mere court, with its appendages, the executive, congress, the law courts, gentlemen of fortune and pleasure, with all the officers, attendants, suitors, expectants and dependents on the whole, however brilliant and honourable this collection may be, if we expect it will have any sincere attachments to simple and frugal republicanism, to that liberty and mild govern-

[78] *Ibid.*

[79] *Doc. Hist.* 15, p. 21.

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> ment, which is dear to the laborious part of free people, we most assuredly deceive ourselves.[80]

Bureaucratic growth and those who would seek privileges troubled the dissenting members of Pennsylvania's Constitutional Ratifying Convention. They fearfully realized that the tendency of government was to expand, and they predicted that a future horde of federal revenue officers would plague and plunder the people:

> As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burthensome government. The standing army must be numerous, and as a further support, it will be the policy of this government to multiply officers in every department: judges, collectors, tax-gatherers, excisemen and the whole host of revenue officers will swarm over the land, devouring the hard earnings of the industrious. Like the locusts of old, impoverishing and desolating all before them.[81]

Evoking the memory of the country's triumph against Britain, "A Columbian Patriot"[82] stressed that one of the Revolution's objectives was to do away with the kind of arbitrary and distant revenue officials that under the Constitution would reappear: "[N]or can we be so ungrateful to the memory of the patriots who counteracted their operation, as so soon after their manly exertions to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty revenue officer to enter our houses, search, insult, and seize at pleasure."[83]

One feature of the new Constitution that did not escape the Antifederalists' watchful eyes was that members of Congress could vote their

[80] *Letters from the Federal Farmer*, p. 130. For a similar interpretation of the ways in which ancient Rome was the exploitative center of the Roman Empire, see Lewis Mumford, *The City in History: Its Origins, Its Transformations, and Its Prospects* (New York: Harcourt Brace Jovanovich, 1961), pp. 227–35.

[81] *Doc. Hist.* 15, p. 33.

[82] Mercy Warren of Massachusetts, sister of revolutionary leader James Otis and wife to James Warren, an Antifederalist leader and speaker of the Massachusetts House of Representatives. Mercy Warren was a playwright, poet, and author of a three-volume history of the American Revolution. For Warren's background see *Doc. Hist.* pp. 272n, 273n, and 274n.

[83] *Ibid.*, p. 281.

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own salaries and pay increases. A Columbian Patriot maintained that such a provision would lead to a bloated and uncontrollable bureaucracy: "As the new Congress [is] empowered to determine [its] own salaries, the requisitions for this purpose may not be very moderate, and the drain for public moneys will probably rise past all calculation."[84]

In the discussion of Congressional salaries, the Antifederalists, as they had done with nearly every aspect of the political economy, employed their most enduring criticism of the new government: There were no limits to its power. A Friend to the Rights of the People applied this staple of Antifederalist political thought in his analysis of Congressional salaries, and deducing that such an arrangement would be ripe for abuse, leaving the people with little room for remonstrances. "Here, it is plain, that the salaries of the members of Congress are to be ascertained and fixed by law. It must then be a law of their own making, by which their salaries will be ascertained. How far Congress will extend this power . . . there is no man alive can tell. It is left without bound or limitation—and we may be sure, from the craving appetites of men for gain, it will be stretched as far as the patience, and abilities of the people will bear."[85] He used the courts of Europe as examples of extravagance and waste, pleading to Americans not to follow a similar path:

> European fashions have been transplanted into America. The high taste of foreign Courts wil be relished by Congress. They must live in all the splendor of equipage and attendance. Their revenue must be equivalent. . . . It appears to me therefore, it would be very imprudent, in the United States to let Congress go to the continental Chest, and take out as much money as they please for their services. . . . No wise householder will let her servants make a law to fix their own wages. . . . Nor will any wise community give a greater liberty to the ruling servants of the state. Some bounds ought to be set, otherwise there is no safety.[86]

A Friend was not only concerned with Congressional representatives' right to increase their own income; he also wanted restrictions placed on state-level bureaucrats from doing the same: "For my part, I think

[84] *Ibid.*, p. 280.

[85] Storing, *Complete Anti-Federalist*, vol. 4, p. 238.

[86] *Ibid.*

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here is a wide door open for great abuse; and it will be the wisdom of the states to shut it, by setting some bound to the salaries of their own officers—and this seems to be the more necessary."[87]

V. MONOPOLY

A number of Antifederalists expressed fears that the Constitution would give the central government the power to grant exclusive monopolies. Opposition to state-created and -imposed monopoly privilege had a long and healthy tradition in America. Among the Antifederalists, Agrippa was the most outspoken critic of this prerogative vested in the new Congress. He questioned why Americans should allow the federal government the very same privileges that they had just fought a revolution to end: The new Congress would "have very nearly the same powers claimed formerly by the British parliament. Can we have so soon forgot our glorious struggle with that power, as to think a moment of surrendering it now?"[88]

Agrippa considered a government vested with the power to grant monopolies a symbol of empire, correctly realizing that the main threat to competition came from government, not the market:

> In most countries of Europe, trade has been confined by exclusive charters. Exclusive companies are, in trade, pretty much like an aristocracy in government, and produce nearly as bad effects. . . . [I]n the British islands all these circumstances together have not prevented them from being injured by the monopolies created there. Individuals have been enriched, but the country at large had been hurt . . . because they consequentially defeat the trade of the outports, and are also injurious to the general commerce, by enhancing prices and destroying that rivalship which is the great stimulus to industry.[89]

Like Agrippa, "A Son of Liberty"[90] in his criticisms of the "preposterous"

[87] *Ibid.*, p. 239.

[88] *Ibid.*, p. 97.

[89] *Ibid.*, pp. 104, 80, and 81. Like Agrippa, modern Austrian writers such as Rothbard see monopolies as creatures of government privilege and licensing practices that outlaw competition by fiat. See Rothbard, *Man, Economy, and State: A Treatise on Economic Principles*, 2 vols. (Los Angeles: Nash, 1970), pp. 560–660.

[90] Authorship unknown. *Doc. Hist.* 13, pp. 480–83.

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and "new-fangled" system of government being foisted upon the country, was apprehensive about Congressional monopoly-making power, fearing "monopolies in trade, granted to the favorites of government, by which the spirit of adventure will be destroyed, and the citizens subjected to the extortion of those companies who will have an exclusive right, to engross the different branches of commerce."[91]

To prevent a mercantilistic economic system from developing in America, Agrippa called for severe restrictions to be placed on the government's ability to grant monopolies:

> There ought, then, to have been inserted a restraining clause which might prevent the Congress from making any such grant. . . . The unlimited power over trade, domestic as well as foreign, is another power that will more probably be applied to a bad than to a good purpose. . . . The freedom that every man, whether his capital is large or small, enjoys of entering into any branch that pleases him, rouses a spirit of industry and exertion, that is friendly to commerce. It prevents that stagnation of business which generally precedes public commotions. Nothing ought to be done to restrain this spirit. The unlimited power over trade, however, is exceedingly apt to injure it.[92]

In his exhortations to his fellow countrymen, the Federal Farmer spoke in similar terms: "As monopolies in trade perhaps, can in no case be useful, it might not be amiss to provide expressly against them."[93] Agrippa, using The Federal Farmer's class analysis, anticipated that if Congress were allowed monopoly-making power, America would become divided into classes—those who received privilege and those who did not:

> In a republic, we ought to guard, as much as possible, against the predominance of any particular interest. It is the object of government to protect them all. When commerce is left to take its own course, the advantages of every class will be nearly equal. But when exclusive privileges are given to any class, it will operate to the weakening of some other class connected with them.[94]

[91] *Ibid.*, p. 482.

[92] Storing, *Complete Anti-Federalist*, vol. 4, pp. 81, and 104.

[93] *Letters from the Federal Farmer*, p. 131.

[94] Storing, *Complete Anti-Federalist*, vol. 4, p. 105.

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VI. CONCLUSION

This essay has presented a sample of Antifederalist opinions and ideas on a number of topics relating to political economy. One overriding theme from these passages stands out: The Antifederalists wanted to *limit* the scope and power of the federal government. Limits and controls would prevent intervention by the state in the economic activity of Americans. The Constitution, Antifedralists believed, lacked sufficient mechanisms to prevent such intervention; without such checks, they cautioned, the new government would be able to tax, spend, and regulate without limit.

The Antifederalists' repeated calls for stronger checks on the new government sprang from the deep distrust of power that had been a dominant feature of America's revolutionary ideology. They anticipated, accurately, that ratification would eventually bring about a powerful national state, both distant and uncontrollable. Their writings demonstrated a sophisticated understanding of the economic consequences of government intervention in the economy that has been previously neglected. Though underrated and unappreciated, the Antifederalists' economic thought has proven to be far more durable and relevant than the works of their more celebrated and politically successful Federalist opponents.

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THE INTELLECTUAL STANDARDS OF ADAM SMITH'S DAY

Salim Rashid

In reviewing the contributions of Adam Smith to the growth of economics Hans Brems writes that "[m]uch of what Smith had to say had been said before—but in French. Academic etiquette of his day demanded no acknowledgements, and he offered none."[1] This is an unusually clear statement of a point of view that appears to circulate through much of the economics profession. Adam Smith, it would appear, borrowed much without acknowledgement. Nonetheless, it is not fair to dig deeply into this issue because the mid-eighteenth century was not an age much concerned with scholarly courtesies. I am not aware, however, of any study of the nature of scholarly expectations in this period. It has also been suggested that much of the earlier literature may have been so hard to obtain that it was simply not reasonable to expect Adam Smith to hunt out such material. This note aims to examine the view extant in the literature that academic etiquette of Smith's day "demanded no acknowledgements." We find indignant charges of plagiarism raised against John Asgill in 1696 and against one M'Arthur by

[1] Hans Brems, "Frequently Wrong But Rarely in Doubt," *Challenge* (November–December 1987). It is certainly striking that all the "second-generation" Scottish economists—Dugald Stewart, Francis Horner, and Henry Brougham—as well as Thomas Robert Malthus showed a preference for the Physiocrats. I have alluded briefly to the evidence presented here in Salim Rashid, "Adam Smith's Acknowledgements: Neo-Plagiarism and the Wealth of Nations," JOURNAL OF LIBERTARIAN STUDIES, 9, no. 2 (Fall 1990): 1–24.

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George Chalmers in 1803, and it would thus require curious circumstances for scholarly manners to have altered during the century in between. The obituarist of Sir James Steuart was already accusing (unnamed) scholars of having plagiarized Steuart's works, and the suspicion that the barbs were aimed at Smith need to be examined.[2]

There are four main streams of economic knowledge from which Adam Smith could have drunk. First, the classics were a staple in every educated man's diet and Smith, in particular, relished the Stoics. Second are the natural law philosophers, exemplified chiefly by Grotius and Pufendorf, whose works were discussed and transmitted to Scotland by Adam Smith's teachers. Third, Scotland had long had close ties with France and Holland and even though there do not appear to be direct links with the Dutch, several French economists were undoubtedly familiar to Smith. Finally, we must consider the long tradition of English pamphleteering, a literature that was generated in order to debate policy issues but which often provided insights of permanent value. Those who assert that acknowledgements were not expected in the eighteenth century will have to establish not only that all of the above traditions are deficient in providing due acknowledgement, but also that there was no such practice in other fields such as history or literature—important parts of education in Adam Smith's day, and areas to which Smith himself paid considerable attention.

Strictly speaking, we should separate some closely related issues. While evidence from sources of a much earlier age might show that Smith was familiar with the practice of careful citation, it does not tell us about the literary manners of Smith's own day. If we look at Smith's contemporaries we may be able to infer that Smith knew *his* period required careful citation. Finally, there is the murky question of plagiarism and the attitude of scholars in economics as well as other fields towards this issue. My concern here is with the practice of citation.

I. GROTIUS AND HUTCHESON

It is well known that the Greeks provided only very limited material on economics; even here, however, Adam Smith did not fully escape censure.[3] In his translation of Aristotle's *Ethics and Politics*, the Scottish

[2] John Briscoe, *Mr. John Asgill, his Plagiarism detected* (London: Printed for Andrew Bell, 1696).

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historian John Gillies accused Smith of borrowing the main ideas of the *Theory of Moral Sentiments*. Subsequently, Vernard Foley has dealt with Smith's use of a variety of examples—cloth and ships being the main ones—which suggest Greek inspiration, as well as the use of the contrast between a porter and a philosopher, which is suggestive of the life of Protagoras.[4] However, as our interest is not the substantive doctrines themselves but rather what Smith may have taken to be due literary courtesy, we may move on from the Greeks to the Moral Philosophers.

The writings of Hugo Grotius will serve adequately to emphasize the importance of acknowledgements, especially since most later writers were, by their own admission, commenting on Grotius. A quick look at *De Jure Belli* will serve to justify the appelation of "miracle of Holland" that stuck to Grotius. The careful scholarship that he brings to bear on each issue is striking. To take but one example—because the principles stated have relevance to the wider issue being discussed, the fair treatment of one's predecessors—we turn to the chapter, "On Interpretation," where the proper way to deal with treaties and promises is discussed. The first four principles stated are

I. Promises are outwardly binding.
II. If other implications are lacking, words are to be understood in their ordinary sense.
III. Technical terms are to be explained according to their technical use.
IV. Resort is to be had to conjectures in the case of ambiguous and contradictory expressions, or if conjectures naturally suggest themselves.[5]

There is a manifest desire to be "fair" to one's sources. To support these points alone we find references to Cicero, Isocrates, Livy, the Jewish scholars who wrote on *Numbers*, Procopius, Polybius, Thucydides, Ulpian,

[3] As reported by Dugald Stewart, "An Account of the Life and Writings of Adam Smith, LL.D." in W. Hamilton, ed., *The Collected Works of Dugald Stewart*, vol. 10 (Edinburgh: T. & T. Clark, 1872), pp. 82–84.

[4] Vernard Foley, *The Social Physics of Adam Smith* (West Lafayette, Ind.: Purdue University Press, 1976), p. 154.

[5] Hugo Grotius, *The Law of War and Peace*, translated by F. W. Kelsey (Indianapolis: Bobbs-Merrill, 1925), pp. 409–13.

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Augustine, Servitus, and the Greek Rhetoricians. In another place, in order to justify Plutarch's claim that "There is no war among men which does not originate in a fault," Grotius wrote in a footnote that "[t]his thought is absolutely true, but men seldom reflect upon it, though it has been set forth by many admirable statements by the ancients. What harm, then, to fortify it by the sayings of others, which are not less effective?"[6] Grotius goes on to quote Athenaeus, Fabianus, Papirius, Philo, Pliny, Terome, Chrysostom, Claudian, and Agathias in support. Even in a work designed to have practical influence, as *De Jure Belli* eminently was, a love of scholarship shines abundantly.

When Adam Smith's teacher, Francis Hutcheson, came to write a short textbook, he made it very clear that he was only representing well-established notions and gave an explicit reference to Grotius and to his own teacher, Gershom Carmichael.[7] In the preface addressed "To the Students in Universities" Hutcheson is careful to note how heavily he depends upon others:

> The following books contain the elements of these several braches of moral philosophy; which if they are carefully studied may give the youth an easier access to the well known and admired works either of the ancients, Plato, Aristotle, Xenophon, Cicero; or of the moderns, Grotius, Cumberland, Puffendorf, Harrington and others, upon this branch of philosophy.
>
> The learned will at once discern how much of this compend is taken from the writings of others, from Cicero and Aristotle; and to name no other moderns, from Puffendorf's smaller work, de officio hominis et civis, which that worthy and ingenious man the late Professor Gerschom Carmichael of Glasgow, by far the best commentator on that book.

Hutcheson was apparently not satisfied with such a general acknowledgement and indicates later how he would have liked to have elaborated on it.

> In the second impression of this book some few additions seemed necessary and several amendments. The author once intended to have made references all along to the more eminent writers, ancient

[6] *Ibid.*, p. 80.

[7] Francis Hutcheson, *A Short Introduction to Moral Philosophy* [1747] (Hildsheim: George Olms, 1969), p. i.

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> or modern, who treated the several subjects. But considering that this could be of no use except to those who have the cited books at hand, and that such could easily by their indexes find the corresponding place for themselves: He spared himself that disagreeable and unnecessary labour. All who have looked into such subjects know that the general doctrine and foundations of morals may be found in the antients above mentioned, and in Dr. Cumberland, and in Lord Shaftesbury: and that scarce any question of the law of nature and nations is not to be found in Grotius, Puffendorf, especially with Barbeyrac's copious notes, Harrington, Lock, or Bynkershock, to mention no more. Nay in Barbeyrac one finds the principal authors who have published large dissertations on particular heads. Such as want more full discussions of any such points, must have recourse to these authors.[8]

It is worth emphasizing that Hutcheson was so careful even in a textbook, where originality would have been a minor concern and readers would not have expected the citation pattern of a research report.

II. CONTEMPORARY ECONOMISTS

The authorities referred to by Adam Smith himself in the *Wealth of Nations* suggest that the eighteenth century had much higher literary standards than has been commonly supposed. Charles Smith, whom Adam Smith called "the very well-informed author" of *Three Tracts on the Corn Trade*, provides careful references to all his sources.[9] The "sober and judicious" Adam Anderson, as he is called in the *Wealth of Nations*, is yet another author who is careful to document his work in the *Historical and Chronological Deduction of the Origin of Commerce*. The extent to which some of Smith's authorities took pleasure in looking up predecessors is amply indicated by the following entry in Anderson's book.

> The author . . . has in his possession a most judicious pamphlet, published in this year 1581, and dedicated to Queen Elizabeth, which, in his opinion, merited this short mention, being entitled, A compendious Examination of certain ordinary Complaints of divers of

[8] *Ibid.*, p. iv.

[9] Charles Smith, *Three Tracts on the Corn Trade and Corn Laws* (London: J. Brotherston, 1766).

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> our Countrymen in these our days. (By W. S.) It is in the black letter. Therein, public spirit, or zeal for the community,—the point of enclosures for pasture, then so much clamored against,—the dearth of provisions,—the decay of towns,—the multitude of sheep,—the coin's being worn out,—the true standard and intrinsic value of our money, compared with that of foreign nations,—wool, against its exportation,—our extravagant love of foreign wares,—and several other national points of great importance, are all handled in so masterly a manner, and in so pure a diction for the time he wrote, as to give room for conjecturing it might have been penned by the direction of that Queen's ministers, since scarcely any ordinary person, in those early days, could be furnished with so copious a fund of excellent matter.[10]

The only economist of Adam Smith's century who has acquired notoriety for plagiarism is Malachy Postlethwayt, whose works Smith appears to ignore, and who has been most fairly treated by Lucy Sutherland.[11]

Two of the pamphleteers who draw praise from Smith are "Sir Matthew Decker" and the Rev. John Smith. It will be instructive to see what sort of an example these authors set. The author of the *Essay on the Causes of the Decline of the Foreign Trade*, supposed by Adam Smith to be Sir Matthew Decker, is one of the few English pamphleteers to have gained praise from Smith for a theoretical point: "The observation of Sir Matthew Decker, that certain taxes are, in the price of certain goods, sometimes repeated and accumulated four or five times, is perfectly just with regard to taxes upon the necessaries of life."[12] There are three other references to the same pamphlet in the *Wealth of Nations* so we may be sure that this is a pamphlet Smith had read with some care. The *Essay* displays quite modern literary standards, especially if we remember that it was a tract for the times, written by a merchant. The author repeatedly uses and duly acknowledges John Locke, Charles Davenant, John de Wit, Roger Coke, *The British Merchant*, and *Britannia Languens*. When the author of the *Essay* wishes to refute Joshua Gee's opinion on the inadvisability of free ports, he repeatedly references and quotes from Gee's own work.

[10] Adam Anderson, *An Historical and Chronological Deduction of the Origin of Commerce* (London: Printed for J. White, 1801), vol. 2, p. 151.

[11] Lucy Sutherland, "The Law Merchant in England," in A. Newman, ed., *Politics and Finance in the Eighteenth Century* (London: Hambleon, 1984).

[12] Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of nations*, R. H. Campbell and A. S. Skinner, eds. (Oxford: Clarendon Press, 1976), vol. 2, p. 873.

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> Objections against a free-port here having been made by Joshua Gee, an author of good credit, for that reason must not be left unanswered, in his *Tract on Trade* . . ., he expresses himself thus: "But to think it would be an advantage for a trading nation to admit all manner of foreign commodities to be imported free from all duties, is an unaccountable notion, and still less suitable to the circumstances of our island than to the Continent; for we have no inland countries beyond us (as they have) with whom we may carry on trade by land; but what is of the utmost consequence to us, is, that by laying high duties we are always able to check the vanity of our people in the extreme fondness of wearing exotic manufactures: For were it not for this restraint, as our neighbours give much less wages to their workmen than we do, and consequently can sell cheaper, the Italians, the French and the Dutch, would have continued to pour upon us their silks, paper, hats, druggets, stuffs, rateens, and even Spanish wool cloths.[13]

The *Essay* then proceeds with an extended refutation. Although "Decker" is only a merchant, it is noticeable how well read he is. Indeed, the authors referred to by "Decker" make up a good portion of the *Select Tracts* that J. R. McCulloch was to reprint in the mid-nineteenth century.[14]

When we turn to an author who had more leisure and who wrote self-consciously as a scholar, we find even higher standards. We are introduced to the Rev. John Smith by Adam Smith as "the very accurate and intelligent" author of the *Memoirs of Wool*, a book indeed fully deserving of such high praise. In order to provide readers with a comprehensive view of the wooolen trade, John Smith provides extensive quotes from every author he uses as well as detailed references.[15] "It was adjudged better to be prolix," he says in the preface, "than to omit any thing in the least material; and still better, than to leave any fact of moment doubt-

[13] Sir Matthew Decker, *An Essay on the Causes of the Decline of the Foreign Trade*, second edition (London: Brotherton, 1756), reprinted in J. R. McCulloch, *A Select Collection of Scarce and Valuable Tracts on Commerce* (London: Privately Printed for the Political Economy Club, 1856). p. 251.

[14] On the basis of contemporary attributions, followed by George Chalmers in his *Estimate of the Comparative Strength of Great Britain* (London: Printed for John Stockdale, 1804), p. 113, note 2. I believe the author is actually William Richardson.

[15] John Smith, *Chronicon Rusticum—Commerciale or Memoirs of Wool* (London: T. Osborne, 1747), vol. 1, p. viii.

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ful." The preface also provides a detailed account of all the foreign references he plans to use.

> From the nature of which, many of them, it was necessary to be the more large and circumstantial, in several quotations of transcripts, in regard they are not simple, but complicated facts, viz. 1. Opinions and arguments; or, if it is allowable to use the word on this occasion, doctrines or theories. 2. Policies or measures taken in consequence thereof. 3. The result or consequence of those measures. And these being contained partly in small tracks, long since, out of print; the purport of them did not admit of being so briefly summed up, with reference made to the tracts themselves, as if they had been more accessible authors; but in order to a competent pourtrait, they required to be exhibited in their original dress; and though not at full length, yet in some due proportion.
>
> It was further necessary, for the ascertaining and pointing out to observation, several of these facts, to make large additions, occasionally, by way of note, etc.; which has contributed to swell this work to what it is, the quantity of four volumes, although in the compass of two.

In the two volumes that follow, John Smith is almost embarrassingly complete in the way he provides complete references for every view. Sir Josiah Child, Thomas Mun, Charles Davenant, John Locke, Sir Matthew Decker, and a host of lesser lights of English economic pamphleteering appear in these books, together with copious illustrations of their thought. How could one admire such an author and be unaware of the desirability of due acknowledgement?

III. LITERATURE AND HISTORY

It remains to inquire whether general literary standards permitted a looser attitude to acknowledgments and borrowings. Two examples should suffice. When Samuel Johnson wrote about John Dryden in *Lives of the English Poets*, he noted how Dryden had been frequently accused of borrowing: "The perpetual accusation produced against him was that of plagiarism, against which he never attempted any vigorous defense; for

[16] Samuel Johnson, *Lives of the English Poets: A Selection* (London: Everyman's Library, 1975), pp. 135–36.

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though he was perhaps sometimes injuriously censured, he would, by denying part of the charge, have confessed the rest."[16] It is of some importance to note that the issue was not one just recently raised by Johnson, but one that had been with Dryden even in the latter half of the seventeenth century.

Edward Gibbon wrote his *Decline and Fall of the Roman Empire* at the same time as Smith wrote the *Wealth of Nations*, and the "solemn sneer" that he cast on the rise of Christianity was immediately recognized.[17] Gibbon's credentials were questioned by several, most notably by H. E. Davis of Balliol College, Oxford, who produced dozens of pages that showed, in parallel columns, the wholesale manner in which Gibbon had borrowed. In replying to Davis, Gibbon does not claim that he is being held up to new standards, or that it was common practice to plagiarize and he should not be made an exception. Rather, his excuse is based on the very different point that, for his purposes, such borrowing did not matter.[18]

Even the practice of Adam Smith himself and his friends suggest that borrowing was not considered quite so innocent. In 1752 Smith made a long and vehement speech defending his priority regarding the doctrines of natural liberty.[19] Such vigor surely had little point unless originality were valued—and, by implication, unacknowledged borrowing condemned. A few years later it was reported to Smith that Hugh Blair was using materials from his lectures on Rhetoric, and Smith replied to the effect that Blair was welcome to do so.[20] Once again, the report of Blair's purported borrowing to Smith makes little sense unless literary standards then were not widely different from standards today. Adam Smith is careful to acknowledge his debts to David Hume (with the possible exception of the specie-flow mechanism). For example, in singling out Hume for having ntoed the link between commerce and liberty, Smith ignores Sir James Steuart, Lord Karnes, Adam Ferguson, John Millar,

[17] G. W. Bowersock, "Gibbon's Historical Imagination," *American Scholar* 57 (Winter 1988), pp. 33–47.

[18] *Ibid.*, p. 39.

[19] Dugald Stewart, "Account of the Life and Writings of Adam Smith," pp. 67–68.

[20] This aspect is covered in most biographies of Smith. The most careful journal treatment is Ronald Hamowy, "Adam Smith, Adam Ferguson and the Division of Labor," *Economica* 35 (August 1968): 249–59.

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and William Robertson.[21] Hume himself, of course, was not very careful with his acknowledgments.[22] There is the possibility that scholars have been misled about the general intellectual climate by focussing on the mutual admiration club of David Hume and Adam Smith.

IV. CONCLUSION

To summarize, a consideration of the literary standards of acknowledgment prevalent in Adam Smith's day has led to the examination of several possible sources. The moral philosophers from which Smith learned are found to have upheld recognizable standards of scholarship, and this is also true of those English pamphleteers with whom Adam Smith was familiar. It is scarcely possible by means of extracts and quotes to do justice to the extent to which high scholarly standards are visible in Hugo Grotius and the Rev. John Smith; the interested reader has to consult the originals to get such a feeling. The works of Samuel Johnson and of Edward Gibbon show that omitted acknowledgment was reprehensible to both poets and historians. Several incidents from Adam Smith's own life show that originality was well as due acknowledgments were valued. If Adam Smith were indeed deficient in his acknowledgments, there is little justification for supposing that Adam Smith's own practice was justified by the standards of his age.

[21] Adam Smith, *Wealth of Nations*, vol. 1, p. 412, note 6, where the editors draw attention to this point.

[22] Laird Okie, "Ideology and Partiality in David Hume's *History of England*," *Hume Studies* 11 (April 1985): 1–32; David Wootton, "Hume's 'Of Miracles,'" in M. Stewart, ed., *Studies in the Philosophy of the Scottish Enlightenment* (Oxford: Clarendon Press, 1990), pp. 202–03; Salim Rashid, "David Hume and Eighteenth Century Monetary Thought: A Critical Comment on Recent Views," *Hume Studies* 10 (November 1984): 156–64.

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LIBERTARIANISM AND LIBERTINISM

Walter Block

There is perhaps no greater confusion in all of political economy than that between libertarianism and libertinism. That they are commonly taken for one another is an understatement of the highest order. For several reasons, it is difficult to compare and contrast libertarianism and libertinism. First and most important, on some issues the two views do closely resemble one another, at least superficially. Second—perhaps purely by accident, perhaps due to etymological considerations—the two words not only sound alike, but are spelled almost identically. It is all the more important, then, to distinguish between the very different concepts these words represent.

I. LIBERTARIANISM

Libertarianism is a political philosophy. It concerned *solely* with the proper use of force. Its core premise is that it should be illegal to threaten or initiate violence against a person or his property without his permission; force is justified only in defense or retaliation. That is it, in a nutshell. The rest is mere explanation, elaboration, and qualification—and answering misconceived objections.[1]

[1] For further explication, see Rothbard, 1970, 1973, and 1982; Hoppe, 1989, 1990, and 1992; and Nozick, 1974.

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Libertarianism is a theory about what should be illegal, not what is currently proscribed by law. In some jurisdictions, for example, charging in excess of stipulated rent levels is prohibited. These enactments do not refute the libertarian code since they are concerned with what the law is, not with what it should be. Nor does this freedom philosophy technically *forbid* anything; even, strictly speaking, agression against person or property. It merely states that it is just to use force to punish those who have transgressed its strictures by engaging in such acts. Suppose that all-powerful but evil Martians threatened to pulverize the entire earth and kill everyone on it unless someone murdered the innocent Joe Bloggs. The person who did this might be considered to have acted properly, in that he saved the whole world from perishing. But according to the doctrine of libertarianism he should still be guilty of a crime, and thus justly punishable for it. Look at it from the point of view of the bodyguard hired by Bloggs. Surely, he would have been justified in stopping the murder of his client.[2]

Note that the libertarian legal code speaks in terms of the initiation of violence. It does not mention hurting or injuring or damaging. This is because there are so many ways of harming others that should be legal. For example, opening up a tailor shop across the street from one already in business, and competing away its customers, surely offends the latter firm; but this does not violate its rights. Similarly, if John wanted to marry Jane, but she agreed instead to marry George, then once again a person, John, is harmed; but he should have no remedy at law against the perpetrator, George. Another way to put this is that only rights violations should be illegal. Since in this view people only have a right to be free of invasions, or interferences with their persons or property, the law should do no more than enforce contracts, and safeguard personal and private property rights.

Then there is the phrase, "against a person or his property." This, too, must be explicated, for if libertarianism is predicated on punishing uninvited border crossings or invasions, then it is crucial to know where your fist ends and where my chin begins. Suppose we see A reach his hand into B's pocket, pull a wallet out of it, and run off. Is the pickpocket guilty of a crime? Only if the previous possessor of the wallet were the legimate owner. If not, if A were the rightful owner merely repossessing his own

[2] For this example, as for so much else, I am indebted to Murray N. Rothbard.

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property, then a crime has not been committed. Rather, it occurred yesterday, when B grabbed A's wallet, which he is now repossessing.

In the case of the human body, the analysis is usually straightforward. It is the enslaver, the kidnapper, the rapist, the assaulter, or the murderer who is guilty of criminal behavior, because the victim is the rightful owner of the body being brutalized or confied.[3] Physical objects, of course, present more of a problem; things don't come in nature labelled "mine" and "thine." Here the advocate of laissez-faire capitalism relies on Lockean homesteading theory to determine border lines. He who "mixes his labor" with previously unowned parts of nature becomes their legitimate owner. Justice in property is traced back to such claims, plus all other non-invasive methods of title transfer (trade, gifts, and so on).

"Uninvited," and "without permission" are also important phrases in this philosophy. To the outside observer, aided voluntary euthanasia may be indistinguishable from murder; voluntary sexual intercourse may physically resemble rape; a boxing match may be kinesiologically identical to a street mugging. Nevertheless there are crucial differences between each of these acts: The first in each pair is, or at least can be, mutually consensual and therefore legitimate; the latter cannot.

Having laid the groundwork, let us now relate libertarianism to the issues of prostitution, pimping, and drugging. As a political philosophy, libertarianism says nothing about culture, mores, morality, or ethics. To repeat: It asks only one question, and gives only one answer. It asks, "Does the act necessarily involve initiatory invasive violence?" If so, it is justified to use (legal) force to stop it or punish the act; if not, this is improper. Since none of the aforementioned activities involves "border crossings," they may not be legally proscribed. And, as a practical matter, as I maintain in *Defending the Undefendable*, these prohibitions have all sorts of deleterious effects.

What is the view of libertarianism toward these activities, which I shall label "perverse"? Apart from advocating their legalization, the libertarian,

[3] In the religious perspective, none of us "owns" his own body. Rather, we are the stewards of them, and God is the ultimate "owner" of each of us. But this concerns only the relation between man and Deity. As far as the relationship between man and man, however, the secular statement that we own our own bodies has an entirely different meaning. It refers to the claim that we each have free will; that no one person may take it upon himself to enslave another, even for the latter's "own good."

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qua libertarian, has absolutely no view of them at all. To the extent that he takes a position on them, he does so as a non-libertarian.

In order to make this point perfectly clear, let us consider an analogy. The germ theory of disease maintains that it is not "demons," or "spirits," or the disfavor of the gods that causes sickness, but rather germs. What, then, is the view of this theory of disease on the propriety of quarantining an infected individual? On the electron theory of chemistry, or of astronomy? How does it weigh in on the abortion issue? What position do germ theoreticians take on the Balkan War? On deviant sexual practices? None whatsoever, of course. It is not that those who believe germs cause disease are inclined, however, slightly, toward one side or the other in these disputes. Nor is the germ theorist necessarily indifferent to these disputes. On the contrary, the germ-ists, qua germ-ists, take no position at all on these important issues of the day. The point is, the germ theory is completely and totally *irrelevant* to these other issues, no matter how important they may be.

In like manner, the libertarian view takes absolutely no moral or valuative position on the perverse actions under discussion. The only concern is whether the actions constitute uninvited initiatory aggression. If they do, the libertarian position advocates the use of force to stop them; not because of their depravity, but because they have violated the one and only libertarian axiom: non-agression against non-aggressors. If they do not involve coercive force, the libertarian philosophy denies the claim that violence may properly be used to oppose them, no matter how weird, exotic, or despicable they may be.

II. CULTURAL CONSERVATISM

So much for the libertarian analysis of perversity. Let us now look at these acts from a completely different point of view: the moral, cultural, aesthetic, ethical, or pragmatic. Here, there is of course no question of legally prohibiting these actions; as we are evaluating them according to a very different standard.

But still, it is of great interest how we view them. Just because a libertarian may refuse to incarcerate perverts, it does not mean he must remain morally neutral about such behavior. So, do we favor or oppose? Support or resist? Root for or against? In this dimension, I am a cultural conservative. This means that I abhor homosexuality, bestiality, and sadomasochism, as well as pimping, prostituting, drugging, and other such

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egenerate behavior. As I stated in Part I of my three-part interview in *Laissez Faire Books* (November 1991):

> The basic theme . . . of libertarianism (is that) all non-aggressive behavior should be legal; people and their legitimately held private property should be sacrosanct. This does not mean that non-aggressive acts such as drug selling, prostitution, etc., are good, nice or moral activities. In my view, they are not. It means only that the forces of law and order should not incarcerate people from indulging in them.

And again, as I stated in Part III of the same interview (February 1992):

> I don't see libertarianism as an attack on custom and morality. I think the paleolibertarians have made an important point: just because we don't want to put the pornographer in jail doesn't mean that we have to like what he does. On the contrary, it is perfectly coherent to defend his right to engage in that profession and still detest him and his actions.

In order to better pinpoint this concept, let us inquire as to the relationship between a libertarian and a libertine. We have already defined the former term. For our purposes here, the latter may be defined as a person who loves, exults in, participates in, and/or advocates the morality of all sorts of perverse acts, but who at the same time eschews all acts of invasive violence. The libertine, then, will champion prostitution, drug addiction, sado-masochism, and the like, and maybe even indulge in these practices, but will not force anyone else to participate.

Are libertarians libertines? Some clearly are. If a libertarian were a member of the North American Man–Boy Love Association, he would qualify.[4] Are all libertarians libertines? Certainly not. Most libertarians

[4] The issue of children is a daunting and perplexing one for all political philosophies, not just libertarianism. But this particular case is rather straightforward: Any adult homosexual caught in bed with an underage male (who by definition cannot give consent) should be guilty of statutory rape; any parent who permits such a "relationship" should be deemed guilty of child abuse. This applies not only to homosexual congress with children, but also in the case of heterosexuals. There may be an issue with regard to whether the best way to demarcate children from adults is with an arbitrary age cut-off point, but given such a law, statutory rape should certainly be illegal. And this goes, as well, for child abuse, even though there are continuum problems here as well.

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recoil in horror from such goings on. What then is the precise relationship between the libertarian, *qua* libertarian, and the libertine? It is simply this. The libertarian is someone who thinks that the libertine should not be incarcerated. He may bitterly oppose libertinism, he can speak out against it, he can organize boycotts to reduce the incidence of such acts. There is only one thing he cannot do, and still remain a libertarian: He cannot advocate, or participate in, the use of force against these people. Why? Because whatever one thinks of their actions, they do not initiate physical force. Since none of these actions necessarily does so,[5] the libertarian must, in some cases reluctantly, refrain from demanding the use of physical force against those who engage in perversions among consenting adults.[6]

The libertarian may hate and despite the libertine, or he may not. He is not committed one way or the other by his libertarianism, any more than is the holder of the germ theory of disease required to hold any view on libertinism. As a libertarian, he is only obligated not to demand a jail sentence for the libertine. That is, he must not demand incarceration for the non-aggressing, non–child molesting libertine, the one who limits himself to consensual adult behavior. But the libertarian is totally free as a person, as a citizen, as a moralist, as a commentator on current events, as a cultural conservative, to think of libertinism as perverted, and to do what he can to stop it—short of using force. It is into this latter category that I place myself.

Why, then, as a cultural conservative, do I oppose libertinism? First and foremost, because it is immoral: Nothing could be more clear than that these perversions are inimicable to the interest and betterment of mankind. Since that is my criterion for morality, it follows that I would find these activities immoral. Furthermore, however, libertines flaunt the "virtue" of their practices and are self-congratulatory about them. If a "low rung in hell" is reserved for those who are too weak to resist engaging in immoral activities, a lower one still must be held for those who not only practice them but brag about them, and actively encourage others to follow suit.

[5] Of course, as a matter of fact, many if not all pimps, for example, do initiate unjustified violence. But they *need not do so*, and therefore pimping *per se* is not a violation of rights.

[6] I owe this latter point to Menlo Smith.

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Other reasons could be given as well. Consider tradition. At one time I would have scoffed at the idea of doing something merely because it was traditional, and refraining because it was not. My every instinct would have been to do precisely the opposite of the dictates of tradition.

But that was before I fully appreciated the thought of F. A. Hayek. From reading his many works (for example, Hayek, 1973), I came to realize that traditions which are disruptive and harmful tend to disappear, whether through voluntary change, or more tragically, by the disappearance of societies that act in accordance with them. Presumably, then, if a tradition has survived, it has some positive value, even if we cannot see it. It is a "fatal conceit" (Hayek, 1989) to call into question everything for which good and sufficient reason cannot be immediately given. How else can we justify the "blindly obedient" practice of wearing ties and collars, for example?

Tradition, however, is just a presumption, not a god to be worshipped. It is still reasonable to alter and abolish those traditions which do not work. But this is best done with an attitude of respect, not hostility, for that which has worked for many years.

Religious belief furnishes another reason to oppose libertinism: Few sectors of society have been as strong in their condemnation of perversity. For me in the early 1970s, however, religion was the embodiment of war, killing, and injustice. It was an "unholy alliance" of the Crusades, the Inquisition, religious wars, virgin sacrifice, and the burning at the stake of "witches," astronomers, non-believers, free thinkers, and other inconvenient people. At present, I view this matter very differently. Yes, these things occurred, and self-styled religious people were indeed responsible. But surely there is some sort of historical statute of limitations, at least given that present religious practitioners can in no way properly be held responsible for the acts of their forebears. Religion now seems to me one of the last best hopes for society, as it is one of the main institutions still competing valiantly with an excessive and overblown government.[7]

[7] It cannot be denied that the economic statements representing many religions are hardly ringing endorsements of economic freedom and free enterprise (see Block, 1986 and 1988). This would include pastoral letters from the U.S. Catholic Bishops, the Canadian Conference of Catholic Bishops, the Papal Encyclicals and the numerous statements on such matters from the Reformed Jewish and many Protestant denominations. Nonetheless religious organizations, along with the institution of the family, are still the main bulwark against ever-encroaching state power. They play this role, in some cases, if only by constituting a social arrangement alternative to that provided by government.

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To analyze in brief our present plight: We suffer from far too much state interference. One remedy is to apply moral measurement to government. Another is to place greater reliance on "mediating" institutions, such as the firm, the market, the family, and the social club, particularly organized religion. These organizations—predicated upon a moral vision and spiritual values—can far better provide for mankind's needs than political regimes.

Another reason why I oppose libertinism is more personal. I have come to believe that each of us has a soul, or inner nature, or animating spirit, or personhood, or purity, or self respect, or decency, call it what you will. It is my opinion that some acts—the very ones under discussion, as it happens—deprecate this inner entity. They are a way of committing mental and spiritual destruction. And the practical result of these acts, for those able to feel such things, is emptiness and anomie. They may ultimately lead to physical suicide. And this destruction of individual character has grave repercussions for all of society.

III. EXAMPLES: PROSTITUTION AND DRUGS

As an example of this destruction of the individual, consider prostitution. The sinfulness of this act—for both buyer and seller—is that it is an attack upon the soul. In this it resembles certain other forms of conduct: engaging in sex without love or even respect, fornication, adultery, and promiscuity. Prostitution is singled out not because it is unique in this regard, but because it is the most extreme behavior of this type. True, prohibition drives this "profession" underground, with even more deleterious results. True, if the prostitute is a self-owner (that is, she is not enslaved), she has a right to use her body in any non-invasive manner she sees fit.[8] These may be good and sufficient reasons for legalization. However, just because I oppose prohibition does not mean I must value the thing itself. It would be a far, far better world if no one engaged in prostitution, not because there were legal sanctions imposed against it, but because people did not wish to so debase themselves.

At the opposite end of the scale, in a moral sense, is marriage, certainly an institution under seige. The traditional nuclear family is now seen by the liberal cultural elite as a patriarchal, exploitative evil. Yet

[8] A *legal* right, but not a *moral* right.

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it is no accident that the children raised on this model don't go out on murderous rages. Of course, I am not saying that sex outside of the bounds of matrimony should be outlawed. As a libertarian, I cannot, since this is a victimless "crime." As a cultural conservative, however, I most certainly can note that the institution of marriage is under attack as never before, and that its resulting weakness has boded ill for society. I can vociferously maintain that imperfect as real-world marriages are, they are usually vastly superior to the other possible alternatives for taking care of children: the tender mercies of the state, single parents, orphanages, and so on.[9]

For another example, consider drug taking. In my view, addictive drugs are no less a moral abomination than prostitution. They are soul destroyers. They are a slow, and sometimes a not so slow, form of suicide. Even while alive, the addict is not really living; he has traded in a moment's "ecstacy" for focused awareness and competence. These drugs are an attack on the body, mind, and spirit. The user becomes enslaved to the drug, and is no longer master of his own life. In some regards, this is actually worse than outright slavery. At least during the heyday of this "curious institution" during the nineteenth century and before, its victims could still plan for escape. They could certainly imagine themselves free. When enslaved by addictive drugs, though, all too often the very intention of freedom becomes atrophied.

I am not discussing the plight of the addict under the present prohibition. His situation now is indeed pitiful, but this is in large part because of drug criminalization. The user cannot avail himself of medical advice; the drug itself is often impure, and very expensive, which encourages crime, which completes the vicious cycle, and so on. I am addressing instead the circumstances of the user under ideal (legalized) conditions, where the substance is cheap, pure, and readily available, where there is no need of shared needles, and medical advice on "proper" usage and "safe" dosage is readily forthcoming.

There are certain exceptions, of course, to this rather harsh characterization. Marijuana may have some ameliorative effects for glaucoma sufferers. Morphine is medically indicated as a pain reliever in operations. Psychiatric drugs may properly be used to combat depression. But apart

[9] For an analysis of the government's attack on marriage and the family, see Carlson, 1988, and Murray, 1984.

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from such cases, the moral, mental, and physical harm of heroin, cocaine, LSD, and their ilk are overwhelming and disastrous.

Why is it moral treason to engage in such activities, or, for that matter, to pollute one's brain with overindulgence in alcohol? It is because this is a subtle form of suicide, and life is so immeasurably valuable that any retreat from it is an ethical and moral crime. Life, to be precious, must be experienced. Drugs, alcoholism, and the like are ways to drop out of life. What if using these controlled substances is seen as a way of getting "high," a state of being that is exhilarating? My response is that life itself should be a high, at least ideally, and the only way to make it so is to at least try. But it is the rare person who can do anything virtuous at all, while "under the influence."

Once again I reiterate that I am not calling for the legal abolition of drugs. Prohibition is not only a practical nightmare (it increases crime, it breeds disrespect for legitimate law, and so on) but is also ethically impermissible. Adults should have a legal (not a moral) right to pollute their bodies as they wish (Block, 1993; Thornton, 1991). To the objection that this is only a slow form of suicide, I reply that suicide itself should be legal. (However, having said this as a libertarian, I now state as a cultural conservative that suicide is a deplorable act, one not worthy of moral human beings.[10])

We are thus left with the somewhat surprising conclusion that even though addictive drugs are morally problematic, they should not be banned. Similarly with immoral sexual practices. Although upon first reading this may be rather unexpected, it should occasion no great surprise. After all, there are numerous types of behavior which are legal and yet immoral or improper. Apart from the ones we have been discussing, we could include gossip, teasing the mentally handicapped to their faces and making great sport of their responses, not giving up one's seat to a pregnant woman, cheating at games which are "for fun" only, lack of etiquette, and gratuitous viciousness. These acts range widely in the

[10] That is, apart from extenuating circumstances such as continuous excruciating pain, intractable psychological problems, and the like. We have said that the essence of morality is the promotion of the welfare of mankind. In instances such as these, it is conceivable that suicide may be the best way to accomplish this. In any case, the response to these unfortunate people should be to support them, not to punish them. Certainly, the imposition of the death penalty for attempted (failed) suicides—practiced in a bygone era—would be the very opposite of what is required.

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seriousness with which they offend, but they are all quite despicable, each in its own way. And yet it is improper to legally proscribe them. Why not? The explanation that makes the most sense in this quarter is the libertarian one: None of them amounts to invasive violence.

IV. MEA CULPA

Previously, when I argued for the legalization of avant-garde sexual and drug practices (in the first edition of *Defending the Undefendable*), I wrote about them far more positively than I now do. In my own defense, I did conclude the introduction to the first edition with these words:

> The defense of such as the prostitute, pornographer, etc., is thus a very limited one. It consists solely of the claim that they do not initiate physical violence against non-aggressors. Hence, according to libertarian principles, none should be visited upon them. This means only that these activities should not be punished by jail sentences or other forms of violence. It decidedly does *not* mean that these activities are moral, proper or good.

However, when it came to the actual chapters, I was altogether too enthusiastic about the virtues of these callings. I waxed eloquent about the "value of the services" performed. I totally dismissed the moral concerns of third parties. I showed no appreciation of the cultural conservative philosophy. Nowadays, when I reread these passages, I regret them. It seems to me that the only fitting punishment is not to delete these chapters, but to leave them in, for all the world to see.

Marriage, children, the passage of two decades, and not a little reflection have dramatically changed my views on some of the troublesome issues addressed in this book. My present view with regard to "social and sexual perversions" is that while none should be prohibited by law, I counsel strongly against engaging in any of them.

One reason I defended several of them some twenty years ago is that I was so concerned with the evils of initiatory violence that I failed to fully realize the implications of defending these other activities. I was fooled by the fact that while many of these depraved acts are indeed associated with violence, none of them are intrinsically so, in the sense that it is possible to imagine them limited to consenting adults. Attempting in the strongest possible way to make the point that initiatory violence was an evil—and indeed it is—I unfortunately lost sight of the fact that it is not

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the only evil. Even though I of course knew the distinction between the legal and the moral, I believed that the *only* immoralities were acts of aggression. For years, now, however, I have been fully convinced that there are other immoralities in addition to this one.

The mistake I made in my earlier writing, it is now apparent to me, is that I am not only a libertarian but also a cultural conservative. Not only am I concerned with what the law should be, I also live in the moral, cultural, and ethical realm. I was then so astounded by the brilliance of the libertarian vision (I still am) that I overlooked the fact that I am more than only a libertarian. As both a libertarian and a cultural conservative, I see no incompatibility between beliefs which are part of these two very different universes of discourse.

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BOOK REVIEWS

Liberty and Nature: An Aristotelian Defense of Liberal Order. By Douglas B. Rasmussen and Douglas J. Den Uyl. La Salle, Ill.: Open Court, 1991.

The authors of this excellent book have attempted a difficult task. Aristotle's conception of proper politics strikes many historians of philosophy as antithetical to classical liberalism. Leo Strauss, a noted defender of classical political thought, sharply separates natural law from modern "natural right," which abandons the pursuit of virtue. Alasdair MacIntyre denies that the Greeks had a concept of individual rights at all. In bold defiance of orthodoxy, Rasmussen and Den Uyl defend both a version of Aristotelian ethics and a limited government, free-market social order. As they say themselves, to many this appears "an attempt to square a circle" (p. 41).

Two contemporary thinkers have strongly influenced the authors: Ayn Rand, the founder of Objectivism, and that Nestor of Aristotelian philosophers, Henry Veatch. The first of these may arouse misgivings, because of the imperious tone of Rand's writing: *Roma locuta, causa finita est.* But there is none of that here. Quite the contrary, the authors pay close attention throughout to contrasting philosophical views and reply to them in careful detail. Indeed, the book opens with a response to several philosophers who either attack Aristotelian ethics or defend positions at variance with it. Although the discussion of each of these writers—Charles King, Gilbert Harman, Robert Nozick, and Alan Gewirth—raises valuable points, I recommend that lay readers begin with the second chapter. In it the authors commence the direct statement of their own position.

Rasmussen and Den Uyl pose in the second chapter a question that at first glance seems irrelevant to ethics but is in fact fundamental: How can living things be understood? The answer does not lie entirely within the realm of physical science: "When it comes to understanding what living things are and how they grow and develop, teleological explanations seem to be required" (p. 43). A teleological explanation appeals to something's goal or end in order to explain it. Thus, if one says that the heart beats in order to circulate blood through the body, an entire philosophy lies implicit. The heart's operation cannot be

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grasped through purely mechanical analysis; not to understand the goal of its activity is to have failed to penetrate to its essence. More generally, living things can be fully understood only through appeal to their natural ends.

Among living things human beings occupy a special place. People are not governed by instinct but are free to use their intelligence in order to regulate their behavior. To some philosophers, freedom extends to the ultimate choice of goals. We cannot ask whether someone's desires are right; rationality is purely instrumental. It answers the question: How can a goal best be achieved? It cannot by itself prescribe a goal. Ludwig von Mises was an advocate of this position.

Rasmussen and Den Uyl dissent vigorously. "It is important to note here that human freedom for an Aristotelian natural-end ethics is not . . . a freedom with respect to what is the natural function or end of a human being. Human volition has a teleological character. Though the exercise and direction of specific volitional acts is entirely dependent on the individual human being, volition as an inherent power of a human being is for the sake of human well-being and fulfillment" (p. 48).

Part of the authors' case seems to me convincing. Alasdair MacIntyre once claimed that Aristotle's ethics depended on an outdated metaphysical biology; and though he has at least in part recanted, others condemn teleology in even stronger terms. In this view, one can speak of functions or goals only for man-made objects. To say that my car has a function makes sense; to aver that I have one does not. Rasmussen and Den Uyl defend their sort of teleology very well. Goal-directed explanation does not refer to mysterious "entelechies" in the style of Hans Driesch nor does this kind of explanation merely play with words, like the dormitive virtue that Molière mocked. Teleology plays a crucial part in biological explanation, and the view that restricts goals to man-made objects should be rejected. Teleology does not belong "with the gorgons and harpies," in McTaggart's phrase.

That said, I am not persuaded that the authors have correctly identified the human natural end. They are entirely correct to note that human beings cannot rely on instinct but must use reason in order to survive. But this does not suffice to show that the goal of reason is to promote individual survival. The authors seem here to assume without argument that all living things, including persons, aim to persist in their being. I do not say that this is false; rather, it does not strike me as self-evidently true. The legitimacy of teleology does not by itself tell us the goal of a particular organism. This requires separate determination.

A return to the example of the heart will clarify this point. If one asks, How do we know the function of the heart? the answer is obvious. Observation of its characteristic activity verifies our account of its goal. But Rasmussen and Den Uyl have themselves pointed out that human reason does not operate in a fixed way. How then can they with such confidence claim that the mind's

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freedom of action is bound by the goal they specify? To point to the goals of other animals does not clinch the case: Human beings do not operate on instinct.

I do not claim here that they are wrong about the "properly human end," only that their case is unproven. One further point of clarification is needed. When they speak of survival as a natural end, they mean not bare physical continuation but existence as a rational being. "The cardinal virtue, and that which is the source of all other virtues, is rationality. This involves first and foremost a commitment to the policy of identifying and dealing with the world by means of concepts" (p. 64). Rationality, in turn, must not be misunderstood; "Living rationally or intelligently, is, then, not a single dominant end. It is not a specific end which competes with other ends and is thus judged as having more importance than all other ends. . . . [It] is achieved through specific ends which constitute this way of living" (p. 66).

Suppose that Rasmussen and Den Uyl are entirely correct about the natural end of human beings. What, then, has this to do with morality? Why ought I to follow my natural end? The authors manifest their sure philosophical touch in their awareness of this issue. (I fear, by the way, that not a few of their Randian colleagues fail to realize that the question requires response.) The authors answer that "[t]he demand that we justify the obligatory character of . . . [the statement that 'one ought to live in accordance with the requirements of one's nature'] supposes that something else is required for there to be values that are good. It supposes that this ultimate prescriptive premise is in fact not ultimate. . . . [I]t fails to realize that in ethics, as well as elsewhere, an infinte regress in justifications is not possible, and there must be something ultimate" (p. 49).

This reply relies on a good Aristotelian point, but does not in intention or effect show the correctness of the "prescriptive premise." This the reader must assess for himself. In an effort to assist the reader, the authors provide a supplementary argument. The question, Why should I live in accordance with my natural end? if asked by me, presupposes that I wish to know the answer. If so, then I value knowledge. But if it is "the natural end of a living thing which necessitates and makes possible the existence of values . . . someone could not, therefore, value the answer to this question—the answer *qua* value and *qua* object of choice would not exist—if it were not true that one should live in accord with the requirements of one's nature" (p. 50).

This argument goes astray at its last step. Given the authors' account of value, they say correctly that the value of a response to the question rests on the place of knowledge within the natural end of human beings. Very well, then; if I ask the question then I am in so doing acting in accordance with my natural end. But the question is not: Is it ever permissible for me to act in accordance with my natural end? It is, to reiterate, Why *must* I act in this way? The fact, if fact it be, that I cannot ask the question without acting in accord with my nature

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does not show that it is always wrong for me at other times to transgress my nature's requirements. The authors' response assumes the precise point that the inquirer puts in question—the step from natural end to moral ought.

My objection leaves their main thesis intact, however, and they have entirely succeeded in showing that their brand of ethics is a live option. They now confront a serious challenge. Each person must attempt to fulfill the requirements of his or her own nature. Yet the classical liberal society they wish to defend grants each person rights that restrict the actions permissible to others. Further, it is widely assumed that there are moral rights—rights not limited to a particular social order, but rather requirements imposed on us by morality. Do we not wish to say, for example, that Stalin violated the rights of millions of Russians, regardless of the legal status of his regime?

The problem posed to Rasmussen and Den Uyl is this: If I am supposed to fulfill the requirements of my own nature, how do rights enter the scene? If I must act in a certain way to fulfill my nature, this gives me no right to do so. A right imposes duties on others: If I have a right to life, others must not kill me. But my obligation to fulfill my natural end concerns only myself. It is a "person-relative" obligation. In like manner, my obligation to fulfill my nature imposes no duty on me to refrain from interference with others. Why should I care about the efforts at self-fulfillment of other people?

This seems obviously unacceptable: We want a system in which people do respect each other's autonomy. Here, then, is the problem for our authors: How can they reconcile their ethics of individual fulfillment with rights? They begin in a characteristically careful way, with a painstaking analysis of natural rights. The upshot of their discussion is a revolutionary thesis: Natural rights do not directly impose obligations on people. Instead, they delimit the framework of a society that people ought to establish or maintain. If I live in a society in which certain basic rights are respected by most people and enforced against violators, I will be much better able to fulfill my natural end than otherwise. "In our view, something analogous to a category mistake occurs when rights respecting restraint is translated into an interpersonal duty. It is true that one 'ought to respect another's basic right(s),' but the reason that restraint is due is not because of what I owe you, but because of my own principled commitment to human flourishing. That commitment implies standards that define conditions for flourishing in a social and political context" (p. 106).

They term their view "meta-normative": Our obligation is to promote a system in which certain rights are upheld, not to respect these rights directly. In support of their position, they effectively criticize Henry Veatch's attempt to derive natural rights from "duties one naturally owes to oneself" (p. 108). To counter Veatch, they reiterate their key point: "If I have a duty of self-perfection, why are others duty-bound to refrain from interfering with my pursuit of it?" (p. 109)

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They seem to me correct, not only in their riposte to Veatch but more generally: An egoistic ethics does not directly impose on people obligations to respect the rights of others. Before embracing their own "meta-normative" doctrine, however, one should be aware of a drastic consequence of it. What happens when one cannot maintain a society of the desired type? It appears that one has no moral obligation to others.

The authors know this full well and point out themselves the limits on respect for rights their position implies: "We may say, then, that when social and political life is not possible, when it is in principle impossible for human beings to live among each other and pursue their well-being, consideration of individual rights is out of place; they do not apply" (p. 146). To our authors, this state of affairs is acceptable; but matters seem to me quite otherwise. I am perfectly at liberty, on this view, to kill people for sport in a non-social situation. All of the worst crimes imaginable have become transformed into morally permissible conduct by the authors' declaration that it is a "category mistake" to apply rights outside the meta-normative framework. Granted, these crimes cannot plausibly be taken to be required by the pursuit of self-fulfillment; but neither are they forbidden.

The authors maintain that their meta-normative framework justifies rights in all except limited "emergency situations." Still, the view that moral rights totally lapse in the circumstances not covered by the "meta-normative framework" seems counter-intuitive. If self-fulfillment ethics leads to this consequence, is this not a reason to abandon or limit this sort of ethics? Obviously, Rasmussen and Den Uyl do not think so. If we now ask a further question—Why this difference of opinion?—a basic issue in moral philosophy comes into range.

What is the proper procedure in moral philosophy? In my view, people know various moral truths independently of particular moral theories that philosophers devise. We do not start our philosophizing from scratch but rather must conform our theories to what we know at the outset to be true. In criticizing the meta-normative thesis, I made use of this approach: I questioned the theory because it led to a result that seemed at variance with our pre-theoretical starting point. Rasmussen and Den Uyl approach moral philosophy in an entirely different way. They derive their self-fulfillment view from metaphysical principles and do not test their results by "common-sense" moral principles. To distinguish these two methods is of course not to show that either is correct. But I wish the authors had somewhere addressed this issue.

Before our authors can "square the circle" one more task remains. Their meta-normative principle, if correct, justifies a society with rights. But what sort of rights? To achieve their goal of an Aristotelian defense of classical liberalism, they must show that their principle mandates this type of society. They carry out this mission with great success. According to their theory, "all rights must

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be negative. The main reason is, of course, that since rights are meta-normative principles defining the conditions under which further norms and actions can be pursued or followed, they are not thereby conceptual directives to specific obligations. Positive obligations are incurred within the moral territories established by the rights claims" (p. 107). And these are exactly the defining characteristics of a classical liberal society. Rights protect people against forcible interference from others—this is what is meant by the authors' reference to negative rights.

Do the authors succeed in their justification of a classical liberal society? A supreme test for all theories of a free society is the treatment of property rights. Obviously the right to own property is an essential characteristic of a classical liberal society. How, then, is this right derived? In particular, how is property originally acquired? Once original acquisition has been justified, the rest seems easy; owners can sell or give their property to others. In these ways all subsequent acquisition is justified. But that initial step poses the problem—How can someone acquire property if nature is originally unowned?

Rasmussen and Den Uyl identify a fundamental mistake in many discussions of property acquisition. We should not think of property primarily as physical objects but rather as the outcome of human action. "A theory of property rights will . . . concern itself with legitimate exploitation of opportunities not with things or objects. *Ownership* will be the legal expression of the legitimate explanation of opportunities" (p. 117). In other words, property rights are an instance of free action, the right to which the meta-normative framework establishes. When I appropriate unowned property, I deprive no one of resources to which he had a right. Thus I may act as I wish and appropriate the property.

Granted my right to freedom of action, though, why may I "keep the consequences" of my action, namely the physical goods I acquire (p. 120)? The authors provide two responses. First, since the property has been acquired through free action, the burden of proof is on those who challenge the right of acquisition. Opponents must show that one cannot "keep the consequences"; *prima facie*, the right to freedom of action supports the claim that one can. More fundamentally, "human actions which transform the material world . . . can be seen to be nothing less than extensions of self. They make up the life of the person" (p. 127). The physical objects used in this process of self-creation do not exist as resources until a person transforms them. They cannot then be taken away without consent: To do so is an assault on the self.

The key to the authors' theory, then, is that owners create the resources they acquire. Analysis of this position, which has been strongly influenced by Israel Kirzner's account of entrepreneurship (p. 248), would take us too far afield. Given "world enough and time," I should like to discuss a number of other sections

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of the book as well, such as the treatment of commercial relationships as Aristotelian "advantage friendships" and the excellent defense of natural-end ethics against G. E. Moore's "open-question" argument. The reader of *Liberty and Nature* will be continually engaged by the book's arguments. I do not know whether the authors of this outstanding work of moral philosophy have squared the circle, but they have at least come close.

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Objectivism: The Philosophy of Ayn Rand. By Leonard Peikoff. New York: Dutton, 1991.

Leonard Peikoff does not hold humility to be a virtue. Still, I was startled to read that "this book is the definitive statement of Ayn Rand's philosophy—as interpreted by her best student and chosen heir" (p. xv). Peikoff has devoted careful thought to the correct arrangement of topics, so that he can best set forward the systematic nature of Rand's philosophy. In pursuit of this goal, he has the advantage of thirty years of close association with Miss Rand; in addition, he is himself a professional philosopher. After perusal of the preface, the reader's enthusiasm can barely be contained.

Objectivism begins with a basic axiom: Existence exists. By this, Rand does not mean that the universal "existence" exists: Rather, "'[e]xistence' here is a collective noun, denoting the sum of existents" (p. 4, parentheses omitted). I do not suppose anyone will quarrel with this; nor does the second axiom, the fact of consciousness, occasion any misgiving. With commendable caution, Peikoff notes that the concept of existence "does not specify that a physical world exists" (p. 5). This seems reasonable: It does not follow from the fact that something exists that any physical objects exist. How one gets from one to the other is precisely the problem posed by Descartes at the beginning of modern philosophy. How does one know that anything besides one's sense-data and consciousness exists?

Peikoff is guilty of a slight sin of omission, however. Although he does not take the axiom of existence to imply a physical world, he later talks glibly about how perception takes place through the body's contact with external objects and rejects with contempt any skepticism about the senses. Yet he never offers the slightest argument that the physical world exists. I do not mean to suggest that we need to prove that the physical world exists. It may well be that this is a basic fact that, as G. E. Moore argued, must be accepted without further justification. David Kelley, another philosopher of Randian sympathies, takes

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exactly this line in his excellent book *The Evidence of the Senses*.[1] But Peikoff does not adopt this view: He nowhere mentions the existence of the world as a separate principle. How then does it enter the picture?

Peikoff's problems have just begun. One more axiom must be considered: the law of identity, A is A. Peikoff has a remarkable propensity to draw odd conclusions from this uncontestable truth. For one thing, we learn that in "any given set of circumstances . . . there is only one action possible to an entity, the action expressive of its identity. This is the action it will take, the action that is *caused* and necessitated by its nature" (p. 14). But why does Peikoff assume that an entity's nature allows it to perform only one action in given conditions? What if several actions are consistent with the thing's nature? Peikoff himself recognizes the point where human beings are concerned. "The law of causality affirms a necessary connection between entities and their actions. It does not however, specify any particular kind of entity or of action. . . . [It] does not affirm or deny the reality of an irreducible choice" (p. 68). Thus, the law of identity allows only one action in given circumstances, except when Peikoff decides that it does not.

By no means has Peikoff finished with A is A. "As soon as one says about any such [non–man-made] fact: 'It is'—just that much—the whole Objectivist metaphysics is implicit. . . . Such a fact *has to* be; no alternative to it is possible. . . . 'To be,' accordingly, *is* 'to be necessary'" (p. 24). But even if one grants Peikoff's interpretation of causality, this conclusion does not follow. According to Peikoff, given any (non–made-made) entity, it must act in a certain way. From this, Peikoff concludes that the fact that the entity so acts is necessary. But all that he is entitled to conclude is that *if* the entity in question exists, its action is necessary. Peikoff jumps from this to the claim that the existence of the entity itself is necessary. The earth, by its nature, rotates on its axis. But the fact that on November 22, 1963, the earth rotated on its axis might for all that Peikoff has shown have been false. What if the earth had not existed on that date?

Perhaps in reply Peikoff might claim that the earth exists because of the action of other entities; thus its existence is indeed necessary, since these entities had to act in the way they did. But this simply renews the problem: Did these entities have to exist? And in any event, Peikoff does not claim that every entity is caused to exist. The universe, in particular, has no cause. Why then *must* the entities that form it exist? Peikoff has completely failed to show that "[l]eaving aside the man-made, *nothing is possible except what is actual*" (p. 28).

[1] David Kelley, *The Evidence of the Senses* (Baton Rouge, La.: Louisiana State University Press, 1986). See my review in *International Philosophical Quarterly*, vol. 28 (September 1988), pp. 337–39. Peikoff does not cite Kelley's work. Since their falling out, Kelley has ceased to exist: No Randian in the apostolic succession may refer to him.

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The law of identity has more wonders in store. From it, we know that God does not exist. God is an infinite being, but "'[i]nfinite' does not mean large, it means larger than *any* specific quantity, i.e., of no specific quantity. An infinite quantity would be a quantity without identity. But A is A. Every entity, accordingly, is finite" (p. 31). As Duns Scotus pointed out long ago, "infinite" when applied to God is an adverb: It modifies his attributes. If God is infinite in power, for example, his power is such that he can accomplish whatever he wishes that does not violate the laws of logic. But God's power is perfectly definite in character: It is not, as Peikoff thinks, an indefinitely large quantity. To say that God has power over everything is not to say that his power is "without form and void." To make matters worse, Peikoff appeals for support here to Aristotle's argument that the actual infinite does not exist (pp. 31–34). But this argument refers to bodies extended in space and is irrelevant to Peikoff's purpose. As will soon become apparent, the history of philosophy is not one of Peikoff's strong points.

How amazing is that simple principle, A is A! From its study we can derive not only facts about the world but appropriate attitudes toward them. "Metaphysically given facts *are* reality. As such, they are not subject to anyone's appraisal; they must be accepted *without evaluation*. Facts of reality must be greeted not by approval or condemnation, praise or blame, but by a silent nod of acquiescence" (p. 25). Only the man-made can be evaluated; one can, however, evaluate "physical concretes in relation to a human goal" (p. 464, n. 16). I had never before realized how irrational I had been in admiring the Grand Canyon. And when Kant, that fountainhead of evil, said that the starry heavens above filled him with awe, what more might he have said to manifest his disordered mind? How acquiescence is supposed to follow the recognition of necessity, I entirely fail to see. Why should we confine our approval or disapproval to what we can alter?

But I had temporarily forgotten: A is A. To disapprove of what exists is to rewrite reality (p. 27). If, for instance, a skeptic condemns "human knowledge as invalid because it rests on sensory data" (p. 27), he attempts to rewrite reality and has sinned grievously against reason. "But if knowledge does rest on sensory data, then it does so *necessarily*, and again no alternative can even be imagined" (p. 27). Once more Peikoff's point escapes me. The skeptic questions whether sensory data suffice for knowledge of the external world. How does it answer him to say that, necessarily, we rely on the senses? Even if no other model of cognition is imaginable, this hardly shows that the one we have is adequate. If the only way I can cross a ravine is to jump over it, it does not follow that my leap will succeed.

As the last example shows, Objectivists connect very closely metaphysics and the theory of knowledge. The views on the latter subject which Peikoff develops

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closely match his exposition of the former, in both content and intellectual quality. A prime concern of Objectivist epistemology is the nature of our concepts. As one would expect from our author, he offers a clear and forthright position. All concepts are integrations of perceptual data, and "there can be no concepts apart from sense experience. There are no innate ideas, ideas in the mind at birth. Consciousness begins as a *tabula rasa* (a blank slate); all of its conceptual content is derived from the evidence of the senses" (p. 38).

As we shall at once see, Rand, and Peikoff following her, have a good deal to say about the way in which we derive concepts. But Peikoff gives no arguments whatever for the position he has just stated. How does he know that innate ideas do not exist? He does not tell us: Perhaps this is supposed to be another corollary of that ubiquitous principle, A is A. I do not contend that we do have innate ideas; rather, it seems to me, theories about the formation of concepts require argument. Pekoff, I gather, dissents.

Putting this issue to one side for a moment, how exactly do Rand and Peikoff think we acquire concepts? We do so by isolating a group of concrete entities and assessing their observed similarities. For example, a "child observes that a match, a pencil, and a stick have a common attribute, length" (p. 83). If the child integrates his observations in the correct way, he will acquire the concept of length.

And how is he to proceed? "Ayn Rand's seminal observation is that the similar concretes integrated by a concept differ from one another only quantitatively, only in the measurements of their characteristics. When we form a concept, therefore, *our mental process consists in retaining the characteristics, but omitting their measurements*" (p. 83). To return to the child confronted by match, pencil, and stick, he must grasp that the objects have different quantities of the same unit in order to acquire the concept of length. This theory strikes me as a poor one. Measurement does not take place in a vacuum: One cannot just measure, but must measure something. And if someone is aware of what he measures, then he already has the concept that Peikoff thinks measurement will disclose to him. What does the child who perceives a quantitative similarity in the three objects take his perception to be *of*? Length, of course. Measurement presupposes concepts; it does not create them. Further, even if my objection misfires, Peikoff as usual offers no argument to support his view of the way in which concepts are acquired.

Peikoff lives up to the standards readers expect from him in his analysis of the purpose of concepts. Because the human mind is finite, it can grasp at one time only a limited number of units. To cope with large numbers of units, consciousness "must have the capacity to compress its content, i.e., to *economize the units* required to convey that content" (p. 106). The child who has mastered the concept "length" need not keep in mind the dimensions of every object of his acquaintance. He has a means of referring to them all.

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At the culmination of concept acquisition stands definition, which "identifies a concept's units by specifying their *essential* characteristics" (p. 97). But even though the definition cannot list all the characteristics of the concept's units, the concept nevertheless refers to all of these. "A concept is *not* interchangeable with its definition—not even if the definition . . . happens to be correct. . . . [A] concept designates existents, including *all their characteristics*, whether definitional or not" (p. 102).

Thus for Peikoff meaning is *pointing*. The concept "red", for example, points to all red objects that exist, and, incredibly, all the characteristics of these objects. I say "incredibly" because each characteristic itself designates all the objects (and their characteristics) to which it applies. By continuing in this way to spell out the entire meaning of a concept, one will fairly quickly arrive at the result that every concept means everything that exists. Part of "red's" meaning is "apple," and since apples grow on trees, then "growing on a tree" becomes part of the meaning of "red." And then each characteristic of "tree" must be added to "red's" meaning and so on through an endless circle.

Peikoff of course would reject my argument. But he does say that "[n]othing is a completely isolated fact, without causes or effects; no aspect of the total can exist alternatively apart from the total. Knowledge, therefore, which seeks to grasp reality, must also be a total; its elements must be interconnected to form a unified whole reflecting the whole which is the universe" (p. 123). If when writing this passage, Peikoff had kept in mind his view of meaning, he would have at once confronted the difficulty just discussed. To reiterate, in Peikoff's view of concepts, each concept will designate everything that exists.[2]

Fortunately, concept formation is not the sum and substance of the Objectivist theory of knowledge. Peikoff also presents a distinctive account of volition. Commendably, he denies that human beings are inexorably determined by heredity and environment and endorses free choice. He supports a controversial but interesting argument that determinism, the denial of free choice, refutes itself: "When the determinist claims that man is determined, this applies to all man's ideas also, including his own advocacy of determinism. Given the factors operating on him, he believes, he had to become a determinist, just as his opponents had no alternative but to oppose him. How then can he know that his viewpoint is true?" (p. 71). Peikoff fails to mention any of the standard objections to this line of reasoning, which has generated an enormous literature.[3]

[2] A further problem for the theory of concepts is this: If concepts are integrations of perceptual knowledge, how can they apply to entities that have not yet been perceived?

[3] For a discussion of the argument, see J. M. Boyle, Jr., Germain Grisez, and Olaf Tollefsen, *Free Choice: A Self-Referential Argument* (Notre Dame, Ind.: Notre Dame University Press, 1976).

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But I must not be too critical. Unusually for him, he has arrived at a respectable philosophical argument instead of what I had anticipated: "A is A, therefore we've got free will."

But Peikoff touches no philosophical topic that he does not spoil. According to Objectivism, he states, the "primary choice, . . . the one that makes conceptual activity possible, is the choice to *focus* one's consciousness" (p. 56). By "focusing" he means raising one's level of awareness. Since the choice to focus is basic, it cannot be explained. "[I]t is invalid to ask: why did a man choose to focus? There is no such 'why'. There is only the fact that a man *chose:* [H]e chose the effort of consciousness, or he chose non-effort and unconsciousness" (p. 60). We can exercise rational choice only if we focus; but focusing itself depends on choice. The circle is obvious: One cannot choose a condition that makes choice possible. Unless one were already focused, one could not choose to focus. Or can *this* choice proceed unawares? If so, why not other choices? Nor will it do in response to appeal to the alleged fact that the choice to focus is a "primary." Given the circle, this "reply" merely acknowledges irrationality, rather than attempting seriously to confront it.

Peikoff's problem arises, I am inclined to think, from his unsupported claim that awareness must result from choice. Why must one choose to focus? Perhaps one's state of awareness *is* determined, for all Peikoff has said to the contrary. His anti-determinist argument does not rule out the possibility. Even if one's awareness is determined, it does not follow that one's thinking, that is, what one does in the state of awareness, is also determined. I do not contend that awareness *is* determined: This is simply a suggestion as to how the circle can be escaped.

The principles of Objectivist metaphysics and epistemology underlie the most famous part of Rand's philosophy: her egoistic ethics. Here, as always, "A is A" governs. In contrast to irrationalists like David Hume who profess to find a gap between facts and values, "Ayn Rand holds that facts—certain definite facts—do lead logically to values. What 'ought to be' can be validated objectively" (p. 207). This validation depends on the fact that the "realm of existence is the metaphysical fundamental; it is that which every concrete and every issue presupposes. According to Objectivism, this fact has a critical application to the field of values. The alternative of existence or nonexistence is the precondition of all values. If an entity were not confronted by this alternative, it would not pursue goals, not of any kind" (p. 209).

In brief, Peikoff reasons as follows: A value is something that one acts to gain or keep. But only living beings can act. Unless, then, a being confronts the alternative of life or death, it cannot value. No doubt through insufficient grasp of the implications of "A is A", I entirely fail to see how the last step of this argument follows. Granted that one must be alive in order to choose, how does Peikoff obtain that "one must choose to be alive in order to choose?"

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Peikoff illustrates his contention with a thought experiment devised by Rand. He asks us to contemplate an "immortal robot . . . not facing the alternative of life or death, [which] requires no action to sustain itself" (p. 209). According to Peikoff, the robot could make no other choices. Pain, intellectual pleasure, and friendship would mean nothing to it, because it need not pursue values in order to exist (pp. 209–11). Unfortunately, Peikoff gives no argument for the conclusion: He simply reiterates his contention for each value he considers in relation to the robot. He has evidently taken to heart Lewis Carroll's line: "What I tell you three times is true."

Despite my criticisms of Peikoff, I must acknowledge that with this argument he has made a vital contribution to theology. Many religious believers think that after death they will either enjoy the eternal bliss of heaven or suffer the agonies of everlasting damnation. Thanks to Peikoff, they can end their concern. It does not matter whether one's destination is heaven or the lower climes. Both states are supposed to last forever: and to a being that cannot again die, nothing can matter. "Depart from me, ye cursed, into everlasting fire" portends nothing better or worse than "This day shalt thou be with me in Paradise."

The example of the immortal robot enables Peikoff to "reach the climax of Ayn Rand's argument. Only the alternative of life vs. death creates the context for value-oriented action, and it does so only if the entity's end is to preserve its life. By the very nature of 'value,' therefore, *any code of values must hold life as the ultimate value*" (p. 212). I once more confess to bafflement. How does Peikoff's conclusion follow from the "fact" that only beings that face the choice of life or death can pursue values? Why must the necessary condition of value be the ultimate value? Once more, Peikoff offers no argument.

Peikoff devotes a great deal of attention to the Objectivist conception of moral virtue, but as an exercise of mercy (which I, not he, think a virtue), I will pass over this part of the book. Doing so, I regret to say, requires that we refrain from discussion of that fascinating section, "Sex as Metaphysical" (pp. 343–49).

Instead let us turn to Peikoff's account of capitalism. Here for once he stands on firm ground and makes some excellent, if unoriginal, remarks about the benefits of capitalism and the perils of government interference with the free market. "Because it is the system geared to the requirements of the creative process, capitalism is the system of wealth. It is a system that has no competition at all in regards to the achievement of material abundance—a fact that the enemies of capitalism turn into an objection" (p. 388).

This is well said; but readers who anticipate that Peikoff will drop the ball need not fear disappointment. Peikoff apparently rejects the contention of Austrian economics that economic value is subjective. Quite the contrary, it is objective: "The economic value of goods and services is their *price* . . . and prices on a free market are determined by the law of supply and demand. . . . The market price of a product is determined by the conjunction of two evalua-

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tions, i.e., by the voluntary agreement of sellers and buyers" (p. 396). While Peikoff is entirely right that demand and supply determine price, price is not itself a value or preference; it is the outcome of the values that each buyer and seller places on a product. To arrive at his conclusion that economic value is objective, Peikoff has elided the distinction between preferences and their results.

It is hardly surprising that Peikoff prefers his own defense of capitalism to the arguments of other advocates of that system. "As a rule, the defenders of capitalism have been worse—more openly irrational—than its attackers. The man who spread the notion that capitalism means death for the weak was . . . Herbert Spencer; capitalism, he held, permits only the 'survival of the fittest.' This is the conclusion Spencer reached by attempting to deduce capitalism from the intellectuals' fad of the period, Darwin's theory of evolution" (p. 405). These remarks are filled with preposterous errors. Spencer thought that capitalism best promoted the interests of the poor: Peikoff completely misapprehends what Spencer meant by "survival of the fittest." Spencer did not derive his defense of capitalism from Darwin; if anything, Darwin was influenced by him, since Spencer's *Social Statics*, published in 1850, advocated an evolutionary theory nine years before the appearance of *Origin of Species*.

The discussion of Spencer is no aberration. Elsewhere we learn that Objectivists dissent from "the famous and entirely accurate remark made in his later years by John Stuart Mill. . . . 'We are all socialists now'" (p. 394). The "famous and entirely accurate remark" was not made by Mill, but by Sir William Harcourt. The author of *The Ominous Parallels* has not lost his technique.

Whatever the mistakes of the book, however, one finishes it with a feeling of gratitude. Never before have the implications of the law of identity been so thoroughly explored. "A is A" will never be the same again.

DAVID GORDON

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